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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0116]

RIN 0579–AC64

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations by eliminating a treatment requirement for Ya pears imported from Shandong Province, China; clarifying the conditions that apply to the importation of sand pears from the Republic of Korea and Japan; and clarifying the distinction between plant parts that would be considered plant litter or debris and those that would not. These changes eliminate a treatment requirement that we have determined is no longer necessary and clarify some existing provisions in order to make the regulations easier to understand and implement.

DATES: *Effective Date:* March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operation, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–5333.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart-Fruits and Vegetables'' (7 CFR 319.56–1 to 319.56–47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On December 11, 2007, we published in the **Federal Register** (72 FR 70237–70240, Docket No. APHIS–2007–0116), a proposal [1] to amend the regulations by eliminating a treatment requirement for Ya pears imported from Shandong Province, China; clarifying the conditions that apply to the importation of sand pears from the Republic of Korea and Japan; and clarifying the distinction between plant parts that would be considered plant litter or debris and those that would not.

We solicited comments concerning our proposal for 30 days ending on January 10, 2008. We received two comments by that date, both from tree fruit industry groups. The comments are discussed below by topic.

One commenter expressed frustration with what he characterized as technical barriers that are preventing the exportation to China of pears grown in the United States and stated that such barriers should be removed before we amend the regulations to benefit Chinese pear growers.

As a signatory to the International Plant Protection Convention, the United States has agreed not to prescribe or adopt phytosanitary measures concerning the importation of plants, plant products, and other regulated articles unless such measures are made necessary by phytosanitary considerations and are technically justified. Given that, we do not believe it would be appropriate to delay our removal of a treatment requirement that has been shown to be unnecessary in order to force reciprocal market access.

The other commenter stated that, while the proposed definition of *plant litter and debris* seems straightforward, the Department of Homeland Security's Customs and Border Protection (CBP) inspectors will need to be trained to recognize the portions of plants permitted entry from those that are not permitted entry. The commenter asked whether APHIS and CBP will provide this type of training prior to implementation of the new regulation.

We work closely with CBP to ensure that inspectors at the ports of entry are provided with the training and support they need to carry out their duties. This includes ensuring that inspectors are provided accurate and up-to-date information as to which portions of plants are approved for entry and which are not.

The same commenter also requested further clarification of the term ''freedom'' as it is used in § 319.56–3(a) to indicate that fruits and vegetables imported under the subpart must be free of plant litter or debris. Specifically, the commenter asked whether, as a practical matter, freedom meant zero litter or debris or would a generic tolerance be used, below which the shipment would be considered practically free of plant litter or debris.

We do not employ a generic tolerance for plant litter or debris. While some allowances may on occasion be made for litter or debris appearing in a consignment, decisions as to whether such allowances should be made are based on inspectional guidelines and depend on a number of factors, including the type of litter or debris and the pest risks known to be associated with it, the nature of the commodity, and its end use.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and the Regulatory Flexibility Act

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

In this document, we are amending the regulations pertaining to the importation of fruits and vegetables to eliminate a treatment requirement for Ya pears imported from Shandong Province, China; to clarify the conditions that apply to the importation of sand pears from the Republic of Korea and Japan; and to clarify the distinction between plant parts that would be considered to be plant litter or debris and those that would not. Of these changes, only the elimination of the treatment requirement could be expected to result in any economic effects.

Removing the cold treatment requirement for Ya pears imported from Shandong Province will reduce

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0116.*

importers' shipping expenses and may also affect domestic pear growers, especially those who produce Ya and other Asian pears, and the wholesalers and distributors of these commodities. However, for both foreign and domestic pear producers, the change in requirements is expected to have a very limited effect on the supply and demand for pears overall.

China is the world's largest producer of pears and accounts for 65 percent of world pear production. According to statistics for marketing year 2005 for three varieties of Chinese pears, including the Ya variety, Hebei Province produced the largest volume of pears, accounting for about 29 percent of pear production in China. Shandong Province produced about 9 percent of China's pears during this time. Although China's Ya pear exports are not classified by the originating province, the removal of the cold treatment requirement of Ya pears produced in Shandong Province may be expected to affect about 25 percent of total U.S. imports of Ya pears from China, assuming that the quantities exported to the United States from the two provinces reflect their relative levels of production.

The shipping expenses of importers seeking to import Ya pears from Shandong Province could, under this rule, be reduced by the amount of the expense of the cold treatment. This amount is estimated to be approximately $0.06 per kilogram of pears. Since the number of Ya pears imported from Shandong Province is estimated to be approximately one-fourth of total Ya pear imports from China, the net impact on the average price of Ya pears will likely be considerably smaller than $0.06 per kilogram. If the cost reduction associated with the removal of the cold treatment requirement affects the retail price of Ya pears in the United States, it would be minimal.

Under the criteria established by the Small Business Administration, fruit merchant wholesalers (North American Industry Classification System code 424480) must have 100 or fewer employees to be considered small entities. In 2002, there were 5,376 fresh fruit and vegetable merchant wholesalers in the United States with a total of 110,578 paid employees, or, on the average, 21 paid employees per establishment. Therefore, domestic fruit merchant wholesalers that may be affected by this rule are predominantly small entities.

The 2002 Census of Agriculture estimates that there are approximately 11,000 pear growers distributed throughout the United States, and that the vast majority of pear growers operate in orchards smaller than 250 acres, and with less than $750,000 in annual receipts. The average annual sales value of pear growers is estimated to be approximately $24,416 per grower. Based on this data, it is most likely that pear growers in the United States are predominantly small entities.

In the United States, Asian pears represent a small share of the pear industry. In California, which contains the largest number of Asian pear growers in the country, Asian pears constituted about 7 percent of the total harvested acreage in 2006. Of the Asian pear varieties produced in the United States, Ya pears are estimated to make up a very small percentage of the total number. The value of domestic Ya pears is estimated at less than $1 million.

The expected economic effect of removing the cold treatment requirement for Ya pears from Shandong Province is minor. Therefore, this rule is expected to have little effect on importers or producers of Ya pears in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State or local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–2 is amended as follows:

■ a. By removing the definition for *plant debris*.

■ b. By adding, in alphabetical order, definitions for *plant litter and debris* and *portions of plants* to read as set forth below.

§ 319.56–2 Definitions.

* * * * *

Plant litter and debris. Discarded or decaying organic matter; detached leaves, twigs, or stems that do not add commercial value to the product.

* * * * *

Portions of plants. Stalks or stems, including the pediculus, pedicel, peduncle, raceme, or panicle, that are normally attached to fruits or vegetables.

* * * * *

■ 3. In § 319.56–3, paragraph (a) is revised to read as follows:

§ 319.56–3 General requirements for all imported fruits and vegetables.

* * * * *

(a) *Freedom from unauthorized plant parts.* All fruits and vegetables imported under this subpart, whether in commercial or noncommercial consignments, must be free from plant litter or debris and free of any portions of plants that are specifically prohibited in the regulations in this subpart.

* * * * *

■ 4. Section 319.56–13 is amended as follows:

■ a. In the table in paragraph (a), by removing the entry for ''Republic of Korea'' and by adding, in alphabetical order, an entry for ''Korea, Republic of'' to read as set forth below:

■ b. In paragraph (b), by revising paragraph (b)(5)(ix) to read as set forth below.

§ 319.56–13 Fruits and vegetables allowed importation subject to specified conditions.

(a) * * *

Country/locality of origin	Common name	Botanical name	Plant part(s)	Additional requirements
* *	*	* *	*	*
Korea, Republic of	Dasheen	*Colocasia* spp., *Alocasia* spp., and *Xanthosoma* spp.	Root	(b)(2)(iv).
	Sand pear	*Pyrus pyrifolia* var. *culta*	Fruit	(b)(5)(ix).
	Strawberry	*Fragaria* spp	Fruit	(b)(5)(i).
* *	*	* *	*	*

(b) * * *

(5) * * *

(ix) Except for sand pears entering Hawaii, only precleared consignments are authorized. The consignment must be accompanied by a PPQ Form 203 signed by the APHIS inspector on site in the exporting country.

* * * * *

§ 319.56–29 [Amended]

■ 5. Section 319.56–29 is amended by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

Done in Washington, DC, this 25th day of February 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–3901 Filed 2–28–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC01

Common Crop Insurance Regulations, Florida Citrus Fruit Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final regulation which was published Thursday, February 7, 2008. The regulation pertains to the insurance of Florida Citrus Fruit.

DATES: *Effective Date:* The effective date for the final rule published February 7, 2008 (73 FR 7190), is corrected to March 15, 2008. Other corrections in this document are also effective March 15, 2008.

FOR FURTHER INFORMATION CONTACT: Bill Klein , Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of these corrections was intended to amend certain Florida Citrus Fruit Crop Insurance Provisions to be used in conjunction with the Common Crop Insurance Policy Basic Provisions for ease of use and consistency of terms.

Need for Corrections

As published at 73 FR 7190, the final regulation contained errors that may prove to be misleading and need to be clarified.

1. The first error is contained in the beginning in the Final Rule on page 7190 where it indicates the Effective Date of the amendments is March 10, 2008. This is incorrect. The text should read: *Effective Date:* March 15, 2008.

2. The second error is on page 7196 in the words of issuance. This text should have stated the amendments are effective for the 2009 and succeeding crop years. The text should read as follows:

''Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2009 and succeeding crop years as follows:''

3. The third error is on page 7199 in section 10(e)(2)(iv). This correction replaces the semi-colon at the end of paragraph (e)(2)(iv) with a period.

Signed in Washington, DC, on February 21, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–3854 Filed 2–28–08; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket Nos. AO–322–A4; AMS–2006–0079; FV06–959–1]

Onions Grown in South Texas; Order Amending Marketing Order No. 959

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends Marketing Order No. 959 (order), which regulates the handling of onions grown in South Texas. The amendments are based on those proposed by the South Texas Onion Committee (committee), which is responsible for local administration of the order, and the Department of Agriculture (USDA). The amendments will authorize interest and late payment charges on assessments not paid within a prescribed time period and require that a continuance referendum be conducted every six years to determine grower support for the order. The amendments were approved by onion growers in a mail referendum conducted from September 10 through September 28, 2007. The amendments are intended to improve the operation and functioning of the South Texas onion marketing order program. Proposed amendments that failed in referendum and are not included in this final order include authority for supplemental assessment rates, marketing promotion and paid advertising authority, and tenure limitations for committee members.

DATES: This rule is effective March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, 2202 Monterey Street, #102–B, Fresno, CA 93721; telephone: (559) 487–5110, Fax: (559) 487–5906, E-mail: *Martin.Engeler@usda.gov*; or Kathleen

M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Kathy.Finn@usda.gov*.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include a Notice of Hearing issued on May 23, 2006, and published in the May 30, 2006, issue of the **Federal Register** (71 FR 30629); a Recommended Decision issued on March 29, 2007 and published in the April 6, 2007, issue of the **Federal Register** (72 FR 17037); and a Secretary's Decision and Referendum Order issued on August 2, 2007, and published in the August 10, 2007, issue of the **Federal Register** (72 FR 44984).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held on June 15, 2006, in Mission, Texas. Notice of this hearing was issued on May 23, 2006 and published in the **Federal Register** on May 30, 2006 (71 FR 30629). The hearing was held to consider the proposed amendment of Marketing Agreement No. 143 and Order No. 959 regulating the handling of onions grown in South Texas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Notice of Hearing contained proposals submitted by the committee and USDA. Committee proposal number four, pertaining to container marking requirements was withdrawn at the hearing, resulting in a total of five proposed amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on March 29, 2007, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by May 7, 2007. No exceptions were filed.

A Secretary's Decision and Referendum Order was issued on August 2, 2007, directing that a referendum be conducted during the period September 10 through 28, 2007, among South Texas onion producers to determine whether they favored the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of onions represented by voters voting in the referendum. Voters voting in the referendum favored two of the five proposed amendments.

The amendments favored by voters and included in this order will:

1. Add authority to collect interest and late payment charges on unpaid handler assessments; and

2. Require that a continuance referendum be conducted every six years to determine industry support for the order.

Three amendments pertaining to: Establishing supplemental assessment rates on specified containers of onions; authority for marketing promotion, including paid advertising; and limiting the number of consecutive years a member may serve on the committee, failed to obtain the requisite level of support needed to pass in referendum.

USDA also proposed to allow such changes as may be necessary to the order so that all of the orders' provisions conform to the effectuated amendments. None were deemed necessary.

The amended marketing agreement was subsequently mailed to all South Texas onion handlers in the production area for their approval. The marketing agreement was not approved by handlers representing at least 50 percent of the volume of onions handled by all handlers during the representative period of August 1, 2006, through July 31, 2007.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $6,500,000.

There are approximately 114 growers of onions in the production area and approximately 38 handlers subject to regulation under the order. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $l.16 million and $1.12 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other productive enterprises would likely push a number of these handlers above the $6,500,000 annual receipt threshold. Likewise, all of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

The committee is comprised of 10 growers and 7 handlers, representing both large and small entities. Committee meetings are open to the public. All members are able to participate in committee deliberations and each has an equal vote in committee decisions. When the committee met on October 28, 2004, and recommended the proposed amendments, all views expressed by the members and others in attendance were considered.

In addition, the hearing to receive evidence on the proposed changes was open to the public and all interested parties were invited and encouraged to participate and provide their views.

The amendments are intended to improve the operation and

administration of the order, and to provide producers an opportunity to indicate whether they favor continuance of the order. Record evidence indicates that the amendments are intended to benefit onion producers and handlers under the order regardless of size.

The amendment to authorize the committee to charge interest and/or late payment fees on assessments not paid within a prescribed time period will not have a differential impact on small and large entities. According to the record, late fees and interest charges will be based on handlers' timeliness of payments, regardless of size. A hearing witness familiar with the assessment collection operations under the order stated that there is no relationship between a handler's performance with regard to timely assessment payment and the size of the handler's business operation. Any increased costs will be borne only by those handlers that fail to pay their assessments in a timely manner. These potential costs will offset any potential advantage handlers could gain by not paying their assessments when due and will thus promote equity for all handlers. It will provide an incentive to pay on time. This proposed amendment is strictly a performance-based measure and will thus be applied based on handlers' performance with respect to their payment of assessments.

The proposal to require continuance referenda on a periodic basis to ascertain grower support for the order will allow growers to vote on whether to continue the operation of the program. This provides a means for those whom the order was intended to benefit with an opportunity to express their views regarding continuation of the marketing order. USDA will conduct the referenda, and thus USDA will bear the majority of any associated costs.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that while some minimal costs may occur, those costs will be outweighed by the benefits expected to accrue to the South Texas onion industry.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. The amendments are designed to improve the administration and operation of the order and to provide an opportunity to ascertain producer support for the order.

Paperwork Reduction Act

Current information collection requirements for Part 959 are currently approved by the Office of Management and Budget (OMB) under OMB number 0581–0178, ''Vegetable and Specialty Crops.'' No changes in those requirements as a result of this proceeding are needed. Should any changes become necessary, they will be submitted to OMB for approval.

As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

Civil Justice Reform

The amendments to Marketing Order 959 stated herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. They will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Order Amending the Order Regulating Onions Grown in South Texas

Findings and Determinations

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record.

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 959 (7 CFR part 959), regulating the handling of onions grown in South Texas.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions grown in the production area; and

(5) All handling of onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations*. It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping onions covered by the order as hereby amended) who, during the period August 1, 2006 through July 31, 2007, handled 50 percent or more of the volume of such onions covered by the order, as hereby amended, have not signed an amended marketing agreement; and,

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum and who, during the period August 1, 2006 through July 31, 2007 (which has been determined to be a representative period), have been engaged within the production area in the production of onions for market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of onions in the production area.

Order Relative to Handling of Onions Grown in South Texas

It is therefore ordered, That on and after the effective date hereof, all handling of onions grown in South Texas shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of proposals contained in Material Issue numbers 2 and 5 of the proposed order amending the order contained in the Recommended Decision issued by the Administrator on March 29, 2007, and published in the **Federal Register** on April 6, 2007, shall be and are the terms and provisions of this order amending the order and set forth in full herein.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended by amending part 959 as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add a new paragraph (e) to § 959.42 to read as follows:

§ 959.42 Assessments.

* * * * *

(e) If a handler does not pay assessments within the time prescribed by the committee, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the committee with approval of the Secretary.

■ 3. In § 959.84, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 959.84 Termination.

* * * * *

(d) The Secretary shall conduct a referendum within six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance is favored by producers. The Secretary would consider termination of this part if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of onions represented in the referendum favor continuance.

* * * * *

Dated: February 26, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–3944 Filed 2–28–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 966

[Docket No. AMS–FV–07–0014; FV07–966–2 FIR]

Tomatoes Grown in Florida; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Florida Tomato Committee (Committee) for the 2007–08 and subsequent fiscal periods from $0.035 to $0.0325 per 25-pound carton of tomatoes handled. The Committee locally administers the marketing order which regulates the handling of tomatoes grown in Florida. Assessments upon tomato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* March 31,2008.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (863) 324–3375, *Fax:* (863) 325–8793, or *E-mail: William.Pimental@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida tomato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable tomatoes beginning August 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2007–08 and subsequent fiscal periods from $0.035 per 25-pound carton to $0.0325 per 25-pound carton of tomatoes.

The Florida tomato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Florida tomatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2006–07 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on August 23, 2007, and unanimously recommended 2007–08 expenditures of $2,101,000.00 and an assessment rate of $0.0325 per 25-pound carton of tomatoes. In comparison, last year's budgeted expenditures were $2,193,700. The assessment rate of $0.0325 is $0.0025 lower than the rate previously in effect. Last season the industry shipped 2.6 million 25-pound cartons more than the Committee had anticipated, providing greater revenues than expected from assessments. The Committee's 2006–07 expenses were $200,000 less than budgeted, and they utilized less from reserves than anticipated. The Committee also recommended a reduced budget for 2007–08. Therefore, the Committee voted to recommend a reduced assessment rate.

The major expenditures recommended by the Committee for the 2007–08 year include $900,000 for education and promotion, $467,000 for salaries, $320,000 for research, and $71,000 for employee retirement. Budgeted expenses for these items in 2006–07 were $1,000,000, $445,900, $320,000, and $67,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses, less carry-in and reserve revenues totaling $476,000, by expected shipments of Florida tomatoes. Tomato shipments for the year are estimated at 50 million 25-pound cartons, which should provide $1,625,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve (currently approximately $780,000) will be kept within the maximum permitted by § 966.44 of the order, which states that excess funds cannot exceed one fiscal period's expenses.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2007–08 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 100 producers of tomatoes in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Based on industry and Committee data, the average annual price for fresh Florida tomatoes during the 2006–07 season was approximately $7.69 per 25-pound container, and total fresh shipments for the 2006–07 season were 52,505,687 25-pound cartons of tomatoes. Committee data indicates that approximately 25 percent of the handlers handle 94 percent of the total volume shipped outside the regulated area. Based on the average price, about 75 percent of handlers could be considered small businesses under SBA's definition. In addition, based on production data, grower prices as reported by the National Agricultural Statistics Service, and the total number of Florida tomato growers, the average annual grower revenue is below $750,000. Thus, the majority of handlers and producers of Florida tomatoes may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2007–08 and subsequent fiscal periods from $0.035 to $0.0325 per 25-pound carton of tomatoes. The Committee unanimously recommended 2007–08 expenditures of $2,101,000 and an assessment rate of $0.0325 per 25-pound carton. The assessment rate of $0.0325 is $0.0025 lower than the 2006–07 rate. The quantity of assessable tomatoes for the 2007–08 season is estimated at 50 million 25-pound cartons. Thus, the $0.0325 rate should provide $1,625,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2007–08 year include $900,000 for education and promotion, $467,000 for salaries, $320,000 for research, and $71,000 for employee retirement. Budgeted expenses for these items in 2006–07 were $1,000,000, $445,900, $320,000, and $67,000, respectively.

Last season the industry shipped 2.6 million 25-pound cartons more than the Committee had anticipated, providing greater revenues than expected from assessments. The Committee's 2006–07 expenses were $200,000 less than budgeted, and they utilized less from reserves than anticipated. The Committee also recommended a reduced budget for 2007–08. Therefore,

the Committee voted to recommend a reduced assessment rate.

The Committee reviewed and unanimously recommended 2007–08 expenditures of $2,101,000, which included a decrease in the education and promotion budget. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, Finance Subcommittee, Research Subcommittee, and Education and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the tomato industry. The assessment rate of $0.0325 per 25-pound carton of assessable tomatoes was then determined by dividing the total recommended budget, less carry-in and reserve revenues totaling $476,000, by the quantity of tomatoes, estimated at 50 million 25-pound cartons for the 2007–08 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming 2007–08 fiscal period indicates that the grower price for the 2007–08 season could range between $3.89 and $16.05 per 25-pound carton of tomatoes. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total grower revenue could range between 0.2 and 0.8 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 23, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

An interim final rule concerning this action was published in the **Federal Register** on November 15, 2007 (72 FR 64123). Copies of that rule were also mailed or sent via facsimile to all Florida tomato handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended January 14, 2008, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

PART 966—TOMATOES GROWN IN FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 966 which was published at 72 FR 64123 on November 15, 2007, is adopted as a final rule without change.

Dated: February 25, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–3801 Filed 2–28–08; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AI32

Delegated Authority To Order Use of Procedures for Access to Certain Sensitive Unclassified Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its rules of practice to delegate authority to the Office of the Secretary of the Commission to issue orders requiring the use of certain procedures for access to sensitive unclassified information in adjudicatory proceedings. The NRC is also making available final procedures that would allow potential parties to NRC adjudications to gain access to Sensitive Unclassified Non-Safeguards Information (SUNSI) or Safeguards Information (SGI).

DATES: The effective date of the final rule is March 31, 2008. The implementation date of the procedures is March 31, 2008. If the procedures will be applied in a particular proceeding, the Commission will include them by order in the associated **Federal Register** notice of hearing or a notice of opportunity for hearing.

FOR FURTHER INFORMATION CONTACT: Tison Campbell, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–8579, e-mail *tison.campbell@nrc.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The ADAMS accession number for the procedures is ML080380626; the ADAMS accession number for the response to public comments is ML080380633.

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion
III. Voluntary Consensus Standards
IV. Environmental Impact: Categorical Exclusion
V. Paperwork Reduction Act Statement
VI. Regulatory Analysis
VII. Backfit Analysis
VIII. Congressional Review Act

I. Background

Commission regulations in 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' govern the conduct of NRC adjudicatory proceedings. Potential parties who have requested or who may request a hearing or petition to intervene in a hearing under 10 CFR part 2 may deem it necessary to obtain access to SUNSI (including, but not limited to, proprietary, confidential commercial, and security-related information) or SGI (as defined in 10 CFR 73.2) to meet Commission requirements for hearing requests or for intervention. On August 6, 2007, the Commission announced the availability for comment of procedures to allow potential parties to submit information requests and enter into protective agreements prior to becoming a party to a proceeding so that those who demonstrate a legitimate need for SUNSI or SGI can receive relevant documents to prepare a valid contention. See, Interlocutory Review of Rulings on Requests by Potential Parties for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information; Reopening of Public Comment Period and Notice of Availability of Proposed Procedures for Comment (72 FR 43569; August 6, 2007). After considering public comments, the Commission has finalized the procedures and made them available on the NRC Web site. See, ADAMS Accession No. ML080380626. The Commission has also documented its response to public comments received and made that response available on the NRC Web site. See, ADAMS Accession No. ML080380633.

The procedures reflect the longstanding practice of NRC staff access determinations in the first instance, subject to review by a presiding officer if contested. The procedures also describe how the public will be informed of this process. The procedures address:

(1) When and where to submit requests for access to SUNSI and SGI that is possessed by the NRC;[1]

(2) Who will assess initially whether the proposed recipient has shown a need for SUNSI (or need to know for SGI) and a likelihood of establishing standing;

(3) Who will decide initially whether the proposed recipient is qualified (i.e., trustworthy and reliable) to receive SGI;

(4) Use of nondisclosure affidavits/agreements and protective orders; and

(5) Time periods for making standing, need, and access determinations, producing documents, submitting contentions, and seeking review of determinations.

These procedures also include a ''pre-clearance'' process that would permit a potential party who may seek access to SGI to initiate the necessary background check in advance of a notice of opportunity for hearing.

II. Discussion

As explained in the background information that accompanies the procedures, the use of the procedures in a particular proceeding will be established by order in a **Federal Register** notice of hearing or a notice of opportunity for hearing. The issuance of these orders as part of such **Federal Register** notices is intended to emphasize and make clear that the procedures will be binding on the presiding officer or administrative judge or officer assigned, and on the parties and the potential parties to that proceeding. Having considered public comments and revised the procedures in response, the Commission expects that these final procedures will be appropriate for use in many proceedings. Therefore, for greater administrative efficiency, the Commission concludes that authority to issue the orders requiring the use of the procedures in individual proceedings may be delegated to the Office of the Secretary of the Commission (Secretary). To clarify that the Secretary's authority includes the authority to issue such orders on the Commission's behalf, the Commission is adding a provision to that effect in 10 CFR 2.307 of the agency's rules of practice. Because this delegation is a rule of agency organization, procedure, or practice within the meaning of 5 U.S.C. 553, the Commission has determined that notice and public comment on this amendment is not necessary.

The rule amends 10 CFR 2.307, a provision which concerns extension and reduction of time limits. The Commission is revising the title of the section to refer also to ''delegated authority to order use of procedures for access by potential parties to certain sensitive unclassified information.'' Second, the Commission is adding a new paragraph (c) to that provision. This new paragraph delegates authority to the Secretary ''to issue orders establishing procedures and timelines for submitting and resolving requests for'' SUNSI or SGI. The provision further states that this delegated authority applies in circumstances when potential parties may deem it necessary to obtain access to SUNSI or SGI in order to meet Commission requirements for intervention. This language is intended to mirror the limited scope and purpose of the final access procedures, as identified in the procedures and in the accompanying Background Information of this document. The delegated authority also extends to limited case-specific modifications to those procedures if the Secretary concludes that they are warranted for a particular proceeding. This delegation does not alter or expand the Secretary's existing authority with respect to issuing orders unrelated to requests for access to sensitive unclassified information.

III. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is delegating authority within the agency as a matter of agency organization and procedure. This action does not constitute the establishment of a government-unique standard as defined in the Office of Management and Budget (OMB) Circular A–119 (1998).

IV. Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

V. Paperwork Reduction Act Statement

This rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

[1] The proposed procedures do not address information possessed solely by a licensee or applicant.

VI. Regulatory Analysis

A regulatory analysis has not been prepared for this rule because it applies to the delegation of authority within the NRC and does not involve any provisions that would impose any economic burdens on licensees or the public.

VII. Backfit Analysis

The NRC has determined that the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) do not apply to this final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

VIII. Congressional Review Act

Under the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the Energy Policy Act of 2005, and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND FOR ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871).

Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554.

Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.307, the heading is amended and a new paragraph (c) is added to read as follows:

§ 2.307 Extension and reduction of time limits; delegated authority to order use of procedures for access by potential parties to certain sensitive unclassified information.

* * * * *

(c) In circumstances where, in order to meet Commission requirements for intervention, potential parties may deem it necessary to obtain access to safeguards information (as defined in § 73.2 of this chapter) or to sensitive unclassified non-safeguards information, the Secretary is delegated authority to issue orders establishing procedures and timelines for submitting and resolving requests for this information.

Dated at Rockville, Maryland, this 21st day of February 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–3824 Filed 2–28–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 216

48 CFR Parts 911 and 952

RIN 1991–AB69

Defense Priorities and Allocations System

AGENCY: Department of Energy.

ACTION: Direct final rule.

SUMMARY: The Department of Energy (DOE) today is issuing a direct final rule to update the DOE regulations which implement DOE's delegated authority under section 101(c) of the Defense Production Act of 1950 (DPA). Section 101(c) provides authority to the President of the United States (President) to require the allocation of, or priority performance under contracts or orders relating to, materials and equipment, services, or facilities, in order to maximize domestic energy supplies, if the President makes certain findings. The President's authority under section 101(c) was delegated to the Secretary of Commerce and the Secretary of Energy. This final rule makes a number of changes to conform to a 1991 amendment to the DPA which broadens the scope of authority in section 101(c). This final rule also makes conforming changes to Department of Energy Acquisition Regulation (DEAR).

DATES: This direct final rule is effective April 29, 2008, unless adverse or critical comments are received by March 31, 2008. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: This direct final rulemaking is available and comments may be submitted online at *http://www.Regulations.gov*. Comments may be submitted by e-mail to *Mike.Soboroff@hq.doe.gov*. Comments may be mailed to: Mike Soboroff, U.S. Department of Energy, Office of Electricity and Energy Assurance, OE–30, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

FOR FURTHER INFORMATION CONTACT: Mike Soboroff at (202) 586–4936 or via e-mail at *Mike.Soboroff@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Discussion
II. Final Action
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act

E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13211
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996
L. Approval by the Office of the Secretary of Energy

I. Discussion

The purpose of this final rule is to update DOE regulations at 10 CFR part 216, which implement DOE's delegated authority under section 101(c) of the DPA, to reflect a 1991 amendment to that section. Section 101(c) provides authority to require the allocation of, or priority performance under contracts or orders relating to, materials and equipment, services, and facilities in order to maximize domestic energy supplies, if DOE and the Department of Commerce make certain findings.

As originally enacted in 1975, section 101(c)(1) authorized the President to require the allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment, in order to maximize domestic energy supplies if the President made the following findings described in section 101(c)(3):

(A) Such supplies are scarce, critical, and essential to maintain or further (i) exploration, production, refining, transportation, or (ii) the conservation of energy supplies, or (iii) for the construction and maintenance of energy facilities; and

(B) Maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority specified in subsection (c)(1).

Executive Order (E.O.) 11912 (April 13, 1976) directed that DOE's predecessor, the Federal Energy Administration, be delegated the function of making the ''critical and essential'' finding and that the Department of Commerce be delegated the function of making the findings that supplies are scarce and that it is necessary to exercise the section 101(c) authority.

The Defense Production Act Extension and Amendments of 1991, Pub. L. 102–99, amended section 101 to broaden its scope in section 101(a)(2) by substituting ''materials, services, and facilities'' for ''materials and facilities'' and in section 101(c)(1) by substituting ''materials, equipment, and services'' for ''supplies of materials and equipment.'' Thereafter, the President issued E.O. 12919 (June 3, 1994), which revoked the relevant provisions of E.O. 11912. In section 203 of E.O. 12919, the President delegated to the Secretary of Commerce the section 101(c) authority and directed the Secretary of Commerce to re-delegate to the Secretary of Energy the authority to make the findings described in subsection 101(c)(2)(A) that the materials and equipment, services, and facilities are critical and essential. The Secretary of Commerce retained the authority to make the finding that the materials and equipment, services, or facilities are scarce, and to make the finding that maintenance or expansion of exploration, production, refining, transportation, or conservation of energy supplies or the construction and maintenance of energy facilities cannot reasonably be accomplished without exercising the authority in section 101(c)(1).

DOE's regulations at 10 CFR part 216, which were promulgated in 1978, established the procedures to be used by DOE in considering and making the section 101(c) findings assigned to DOE under E.O. 11912. Today's direct final rule amends part 216 to reflect the broader scope of the Defense Production Act Extension and Amendments of 1991, Public Law 102–99 and E.O. 12919. Today's rule also adds definitions of ''services,'' ''national defense,'' ''facilities,'' and ''person'' and amends the definition of ''materials and equipment'' in § 216.2. In addition, DOE is amending DEAR parts 911 and 952 to inform DOE contracting officers to include in contracts a clause that informs DOE contractors of the Defense Priorities and Allocations System (DPAS) authority.

II. Final Action

DOE is publishing this direct final rule without prior proposal because DOE views these amendments as noncontroversial and anticipates no significant adverse comments. However, in the event that significant adverse comments are filed, DOE has prepared a notice of proposed rulemaking (NOPR) proposing the same amendments. The NOPR is a separate document published today in the **Federal Register**. The direct final rule will be effective April 29, 2008, unless significant adverse comments are received by March 31, 2008. If DOE receives significant adverse comments, the amendments will be withdrawn before the effective date. In the case of withdrawal of this action, the withdrawal will be announced by a subsequent notice published in the **Federal Register**. Relevant public comments will then be addressed in a separate final rule based on the proposed rule that is also issued today. DOE will not implement a second comment period on this action. Any party interested in commenting on this rule should do so at this time. If no significant adverse comments are received, the public is advised that this rule will be effective April 29, 2008. DOE will publish a notice in the **Federal Register** to advise the public if no significant adverse comments are received.

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under E.O. 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Accordingly, this final rule is not subject to review under the E.O. by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the

required review and determined that, to the extent permitted by law, this direct final rule meets the relevant standards of E.O. 12988.

C. Review Under the 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. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the DOE Office of General Counsel's Web site: *http://www.gc.doe.gov*. DOE has reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's direct final rule makes non-discretionary, conforming changes to DOE regulations required by the 1991 amendment to the DPA. It also makes minor changes that will not have any economic impact beyond that of the existing regulations. On this basis, DOE certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This direct final rule contains no new collection of information requiring OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR parts 1500–08), DOE has established regulations for its compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR part 1021, DOE has determined that today's regulatory action is an amendment of an existing regulation that does not change the environmental effect of the regulation being amended (Categorical Exclusion A5). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

F. Review Under 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. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt state law and does 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 E.O. 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to state, local or tribal governments, or to the private sector. This rulemaking does not impose a Federal mandate on state, local or tribal governments or on the private sector.

H. Review Under the 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 rule or policy that may affect family well being. This rule will have no 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 Policy Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Approval by the Office of the Secretary of Energy

The Office of the Secretary of Energy has approved issuance of this direct final rule.

List of Subjects

10 CFR Part 216

Energy, Government contracts, Reporting and recordkeeping requirements, Strategic and critical materials.

48 CFR Part 911

Government procurement.

48 CFR Part 952

Government procurement, Reporting and recordkeeping requirements.

Issued in Washington, DC, on February 20, 2008.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Department of Energy.

William N. Bryan,

Deputy Assistant Secretary, Infrastructure Security and Energy Restoration, Department of Energy.

David O. Boyd,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons set forth in the preamble, DOE amends Chapter II of Title 10 and Chapter 9 of Title 48 of the Code of Federal Regulations (CFR) as set forth below:

PART 216—MATERIALS ALLOCATION AND PRIORITY PERFORMANCE UNDER CONTRACTS OR ORDERS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES

■ 1. The authority citation for part 216 is revised to read as follows:

Authority: Sec. 104 of the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, 89 Stat. 871; section 101(c) of the Defense Production Act of 1950 (DPA), 50 U.S.C. App. 2071(c); E.O. 12919, 59 FR 29525 (June 7, 1994); E.O. 13286, 68 FR 10619 (March 5, 2003); 15 CFR part 700; Defense Priorities and Allocations System Delegation No. 2 (August 6, 2002), as amended at 15 CFR part 700.

■ 2. Section 216.1 is revised to read as follows:

§ 216.1 Introduction.

(a) This part describes and establishes the procedures to be used by the Department of Energy (DOE) in considering and making certain findings required by section 101(c)(2)(A) of the Defense Production Act of 1950, as amended, 50 U.S.C. app. 2071(c)(2)(A) (DPA). Section 101(c) authorizes the allocation of, or priority performance under contracts or orders (other than contracts of employment) relating to, materials and equipment, services, or facilities in order to maximize domestic energy supplies if the findings described in section 101(c)(2) are made. Among these findings are that such supplies of materials and equipment, services, or facilities are critical and essential to maintain or further exploration, production, refining, transportation or the conservation of energy supplies or for the construction or maintenance of energy facilities. The function of finding that supplies are critical and essential was delegated to the Secretary of Energy pursuant to E.O. 12919 (59 FR 29525, June 7, 1994) and Department of Commerce Defense Priorities and Allocations System Delegation No. 2, 15 CFR part 700.

(b) The purpose of these regulations is to establish the procedures and criteria to be used by DOE in determining whether programs or projects maximize domestic energy supplies and whether or not supplies of materials and equipment, services, or facilities are critical and essential, as required by DPA section 101(c)(2)(A). The critical and essential finding will be made only for supplies of materials and equipment, services, or facilities related to those programs or projects determined by DOE to maximize domestic energy supplies. These regulations do not require or imply that the findings, on which the exercise of such authority is conditioned, will be made in any particular case.

(c) If DOE determines that a program or project maximizes domestic energy supplies and finds that supplies of materials and equipment, services, or facilities are critical and essential to maintain or further the exploration, production, refining, transportation or conservation of energy supplies or for the construction or maintenance of energy facilities, such determination and finding will be communicated to the Department of Commerce (DOC). If not, the applicant will be so informed. If the determination and finding described in this paragraph are made, DOC, pursuant to DPA section 101(c) and section 203 of E.O. 12919, will find whether or not: The supplies of materials and equipment, services, or facilities in question are scarce; and maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies or the construction or maintenance of energy facilities cannot be reasonably accomplished without exercising the authority specified in DPA section 101(c). If these additional two findings are made, DOC will notify DOE, and DOE will inform the applicant that it has been granted the right to use priority ratings under the Defense Priorities and Allocations System (DPAS) regulation established by the DOC, 15 CFR part 700.

■ 3. Section 216.2 is amended by revising paragraphs (e) through (j) and adding paragraphs (k) through (n) to read as follows:

§ 216.2 Definitions.

* * * * *

(e) *DHS* means the Department of Homeland Security.

(f) *DOC* means the Department of Commerce.

(g) *DOE* means the Department of Energy.

(h) *Defense Priorities and Allocations System Coordination Office* means the Department of Energy, Office of Electricity and Energy Assurance, OE–30.

(i) *Eligible energy program or project* means a designated activity which maximizes domestic energy supplies by furthering the exploration, production, refining, transportation or conservation of energy supplies or construction or maintenance of energy facilities within the meaning of DPA section 101(c), as determined by DOE.

(j) *Facilities* means all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

(k) *Materials and equipment* means: (1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of such raw materials, commodities, articles, components, products, or items.

(l) *National Defense* means programs for military and energy production or construction, military assistance to any foreign nation, stockpiling, space, and any directly related activity. Such term also includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*) and critical infrastructure protection and restoration.

(m) *Person* means an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any state or local government or agency thereof.

(n) *Services* include any effort that is needed for or incidental to:

(1) The development, production, processing, distribution, delivery, or use of an industrial resource, or critical technology item; or

(2) The construction of facilities.

■ 4. Section 216.3, paragraph (a) is revised to read as follows:

§ 216.3 Requests for assistance.

(a) Persons who believe that they perform work associated with a program or project which may qualify as an

eligible energy program or project and wishing to receive assistance as authorized by DPA section 101(c)(1) may submit an application to DOE requesting DOE to determine whether a program or project maximizes domestic energy supplies and to find whether or not specific supplies of materials and equipment, services, or facilities identified in the application are critical and essential for a purpose identified in section 101(c). The application shall be sent to: U.S. Department of Energy, Attn: Office of Electricity and Energy Assurance, OE–30, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The application shall contain the following information:

(1) The name and address of the applicant and of its duly authorized representative.

(2) A description of the energy program or project for which assistance is requested and an assessment of its impact on the maximization of domestic energy supplies.

(3) The amount of energy to be produced by the program or project which is directly affected by the supplies of the materials and equipment, services, or facilities in question.

(4) A statement explaining why the materials and equipment, services, or facilities for which assistance is requested are critical and essential to the construction or operation of the energy project or program.

(5) A detailed description of the specific supplies of materials and equipment, services, or facilities in connection with which assistance is requested, including: Components, performance data (capacity, life duration, etc.), standards, acceptable tolerances in dimensions and specifications, current inventory, present and expected rates of use, anticipated deliveries and substitution possibilities (feasibility of using other materials and equipment, services, or facilities).

(6) A detailed description of the sources of supply, including: The name of the regular supplying company or companies, other companies capable of supplying the materials and equipment, services, or facilities; location of supplying plants or plants capable of supplying the needed materials and equipment, services, or facilities; possible suppliers for identical or substitutable materials and equipment, services, or facilities and possible foreign sources of supply.

(7) A detailed description of the delivery situation, including: Normal delivery times, promised delivery time without priorities assistance, and delivery time required for expeditious fulfillment or completion of the program or project.

(8) Evidence of the applicant's unsuccessful efforts to obtain on a timely basis the materials and equipment, services, or facilities in question through normal business channels from current or other known suppliers.

(9) A detailed estimate of the delay in fulfilling or completing the energy program or project which will be caused by inability to obtain the specified materials and equipment, services, or facilities in the usual course of business.

(10) Any known conflicts with rated orders already issued pursuant to the DPA for supplies of the described materials and equipment, services, or facilities.

* * * * *

■ 5. In § 216.4, paragraph (a), paragraph (b)(4), and paragraphs (c) and (d) are revised to read as follows:

§ 216.4 Evaluation by DOE of applications.

(a) Based on the information provided by the applicant and other available information, DOE will:

(1) Determine whether or not the energy program or project in connection with which the application is made maximizes domestic energy supplies and should be designated an eligible energy program or project; and

(2) Find whether the described supplies of materials and equipment, services, or facilities are critical and essential to the eligible energy program or project.

* * * * *

(b) * * *

(4) The need for the end product for which the materials and equipment, services, or facilities are allegedly required; and

* * * * *

(c) In finding whether the supplies of materials and equipment, services, or facilities described in the application are critical and essential to an eligible energy program or project, DOE will consider all factors which it considers relevant including, but not limited to, the following:

(1) Availability and utility of substitute materials and equipment, services, or facilities; and

(2) Impact of the nonavailability of the specific supplies of materials and equipment, services, or facilities on the furtherance or timely completion of the approved energy program or project.

(d) Increased costs which may be associated with obtaining materials and equipment, services, or facilities without assistance shall not be considered a valid reason for finding the materials and equipment, services, or facilities to be critical and essential.

* * * * *

■ 6. Section 216.5 is revised to read as follows:

§ 216.5 Notification of findings.

(a) DOE will notify DOC if it finds that supplies of materials and equipment, services, or facilities for which an applicant requested assistance are critical and essential to an eligible energy program or project, and in such cases will forward to DOC the application and whatever information or comments DOE believes appropriate. If DOE believes at any time that findings previously made may no longer be valid, it will immediately notify the DOC and the affected applicant(s) and afford such applicant(s) an opportunity to show cause why such findings should not be withdrawn.

(b) If DOC notifies DOE that DOC has found that supplies of materials and equipment, services, or facilities for which the applicant requested assistance are scarce and that the related eligible energy program or project cannot reasonably be accomplished without exercising the authority specified in DPA section 101(c)(1), DOE will notify the applicant that the applicant is authorized to place rated orders for specific materials and equipment, services, or facilities pursuant to the provisions of the DOC's DPAS regulation.

§ 216.6 [Amended]

■ 7. Section 216.6 is amended:

■ a. In the first sentence by adding '', services, or facilities'' after ''materials and equipment''; and

■ b. At the beginning of the third sentence by removing the words ''Such a'' and adding the word ''A''.

§ 216.7 [Amended]

■ 8. Section 216.7 is amended:

■ a. By removing the word ''such'' in both sentences wherever it appears and adding in its place the word ''the'';

■ b. By removing the words ''in an attempt'' from the first sentence; and

■ c. By removing the words ''the FEMA'' and adding in its place ''DHS'' in the second sentence.

■ d. By removing the words ''will resolve'' and adding in its place ''will attempt to resolve'' in the second sentence.

■ 9. Section 216.8 is revised to read as follows:

§ 216.8 Communications.

All written communications concerning these regulations shall be

addressed to: U.S. Department of Energy, Attention: Office of Electricity and Energy Assurance, OE–30, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Chapter 9 of Title 48

■ 10. The authority citation for parts 911 and 952 is revised to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

PART 911—DESCRIBING AGENCY NEEDS

911.600 [Amended]

■ 11. Section 911.600 is amended by removing the words ''and those energy programs which maximize domestic energy supplies''.

911.602 [Amended]

■ 12. Section 911.602 is amended by removing paragraph (d).

911.604 [Amended]

■ 13. Section 911.604 is amended by removing paragraphs (d) and (e).

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 14. Section 952.211–70 is revised to read as follows:

952.211–70 Priorities and allocations for energy programs (solicitations).

As prescribed in 911.604(a), insert the following provision in solicitations that will result in the award of a contract in support of DOE atomic energy programs.

Priorities and Allocations (Atomic Energy) (APR 2008)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a [ ] DO-Rating; [ ] DX Rating; and certified for national defense use in accordance with the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) (Contracting officer check appropriate box.)

[End of Clause]

■ 15. Section 952.211–71 is revised to read as follows:

952.211–71 Priorities and allocations for energy programs (contracts).

As prescribed in 911.604(b), insert the following clause in contracts and purchase orders that are placed in support of authorized DOE atomic energy programs pursuant to the Atomic Energy Act of 1954, as amended.

Priorities and Allocations (Atomic Energy) (APR 2008)

The Contractor shall follow the provisions of Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) in obtaining materials (including equipment), services, or facilities needed to fill this contract.

[End of Clause]

[FR Doc. E8–3773 Filed 2–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 585

[OTS–2007–0008]

RIN 1550–AC14

Prohibited Service at Savings and Loan Holding Companies Extension of Expiration Date of Temporary Exemption

AGENCY: Office of Thrift Supervision (OTS) Treasury.

ACTION: Final rule.

SUMMARY: OTS is revising its rules implementing section 19(e) of the Federal Deposit Insurance Act (FDIA), which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with respect to a savings and loan holding company (SLHC). Specifically, OTS is extending the expiration date of a temporary exemption granted to persons who held positions with respect to a SLHC as of the date of the enactment of section 19(e). The revised expiration date for the temporary exemption is June 1, 2008.

DATES: *Effective Date:* The final rule is effective on February 29, 2008.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Director, Holding Companies and Affiliates, Supervision Policy, (202) 906–7488, or Karen Osterloh, Special Counsel, Regulations and Legislation, (202) 906–6639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On May 8, 2007, OTS published an interim final rule adding 12 CFR part 585. This new part implemented section 19(e) of the FDIA, which prohibits any person who has been convicted of any criminal offense involving dishonesty, breach of trust, or money laundering (or who has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense) from holding certain positions with a SLHC. Section 19(e) also authorizes the Director of OTS to provide exemptions from the prohibitions, by regulation or order, if the exemption is consistent with the purposes of the statute.

The interim final rule described the actions that are prohibited under the statute and prescribed procedures for applying for an OTS order granting a case-by-case exemption from the prohibition. The rule also provided regulatory exemptions to the prohibitions, including a temporary exemption for persons who held positions with respect to a SLHC on October 13, 2006, the date of enactment of section 19(e). This temporary exemption is set to expire on March 1, 2008, unless a case-by-case exemption is filed prior to that expiration date.[1]

OTS is extending the expiration date of the temporary exemption to June 1, 2008. This extension will avoid needless disruptions of SLHC operations while OTS reviews the public comments and develops a final rule addressing these comments. OTS has concluded that this extension of the exemption of the exemption is consistent with the purposes of section 19(3) of the FDIA.

Regulatory Findings

Notice and Comment and Effective Date

For the reasons set out in the interim final rule,[2] OTS has concluded that: notice and comment on this extension are unnecessary and contrary to the public interest under section 552(b)(B) of the Administrative Procedure Act; there is good cause for making the extension effective immediately under section 553(d) of the APA; and the delayed effective date requirements of section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA) do not apply.

Regulatory Flexibility Act

For the reasons stated in the interim final rule,[3] OTS has concluded that this extension does not require an initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and that this extension should not have a significant impact on a substantial number of small entities, as defined in the RFA.

[1] This temporary exemption originally was scheduled to expire on September 5, 2007. OTS extended the expiration date to March 1, 2008. 72 FR 50644 (Sept. 4, 2008).

[2] 72 FR at 25953.

[3] 72 FR at 25953–54.

Paperwork Reduction Act

OTS has determined that this extension does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

Unfunded Mandates Act of 1995

For the reasons stated in the interim final rule,[4] OTS has determined that this extension will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million of any one year.

Executive Order 12866

OTS has determined that this extension is not a significant regulatory action under Executive Order 12866.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (12 U.S.C. 4308) requires the Agencies to use ''plain language'' in all final rules published after January 1, 2000. OTS believes that the final rule containing the extension is presented in a clear and straightforward manner.

List of Subjects in 12 CFR Part 585

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

■ For the reasons in the preamble, OTS is amending part 585 of chapter V of title 12 of the Code of Federal Regulations as set forth below:

PART 585—PROHIBITED SERVICE AT SAVINGS AND LOAN HOLDING COMPANIES

■ 1. The authority citation for 12 CFR part 585 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, and 1829(e).

■ 2. Amend § 585.100(b)(2) introductory text to read as follows:

§ 585.100 Who is exempt from the prohibition under this part?

* * * * *

(b) *Temporary exemption.* * * *

(2) This exemption expires on June 1, 2008, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 585.110 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

* * * * *

Dated: February 25, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 08–887 Filed 2–28–08; 8:45 am]

BILLING CODE 6720–01–M

[4] 72 FR 25954.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

Office of the Secretary

14 CFR Chapter II

[Docket DOT–OST–2008–0063]

Provision of Entire Aircraft With Crew to a U.S. Certificated Air Carrier by a Foreign Air Carrier

AGENCY: Department of Transportation, Office of the Secretary; Department of Transportation, Federal Aviation Administration.

ACTION: Regulatory guidance.

SUMMARY: This Notice sets forth the conditions under which a foreign air carrier may make an arrangement with a U.S. air carrier for a flight or series of flights, to be conducted with the foreign air carrier's aircraft and crew, for that U.S. certificated air carrier's-authorized services in foreign air transportation. This Notice also describes the regulatory steps involved for seeking Department approval for such an operation.

FOR FURTHER INFORMATION CONTACT: Richard Clarke, Federal Aviation Administration, Air Carrier Operations Branch, AFS–220, (202) 493–5581, or George Wellington, Department of Transportation, Office of International Aviation, X–40, (202) 366–2391.

SUPPLEMENTARY INFORMATION:

Discussion: The Office of the Secretary of Transportation (OST) and the Department's Federal Aviation Administration (FAA) have identified the circumstances under which a foreign air carrier may provide a U.S. certificated air carrier with an entire aircraft with crew without contravening the FAA's regulations that generally prohibit a foreign air carrier from wet leasing aircraft (*i.e.*, providing legal possession of a specific aircraft (in its entirety) and at least one crewmember) to a U.S. certificated air carrier. Such transactions may occur, consistent with FAA and OST regulations,[1] where it is clear that (i) operational control of the flight or flights involved would rest solely with the foreign air carrier and not with the U.S. certificated air carrier; (ii) legal and actual possession of the aircraft at all times would remain with the foreign air carrier; and (iii) OST determines, in conjunction with FAA, that such operations would otherwise be in the public interest, as more fully described below. Under those circumstances, the FAA has determined[2] that such transactions are not leases subject to the foreign wet lease prohibition in § 119.53(b), regardless of whether the parties to the transaction characterize the arrangement as a wet lease.

To conduct an operation in this manner, the foreign air carrier involved would need to apply to the Department for a statement of authorization under 14 CFR part 212 of the Department's regulations. Section 212.9 requires prior Department approval for operations involving the provision of aircraft and crew by a foreign air carrier to another air carrier where the operations involved are in a fifth freedom market for the foreign air carrier, and for any such operations of 60 days or longer duration. Section 212.9(d) also provides that the Department may, at its discretion and upon at least 30 days' notice, require a statement of authorization for these kinds of operations in other cases (*e.g.*, where they are for less than 60 days' duration). Given our need to make the operational control and public interest determinations described above, we will, in accordance with the provisions of § 212.9(d), and effective 30 days from the date of this Notice, require that foreign air carriers desiring to conduct the operations described in this Notice obtain a statement of authorization before conducting any such services.[3]

[1] See 14 CFR 121.153(c), § 135.25(d), § 119.53(b), and § 212.4(b)(1) and § 212.9(b)(2). The cited sections of the FAA's regulations (parts 121, 135 and 119) generally prohibit a foreign air carrier from wet leasing aircraft to a U.S. certificated air carrier. Part 212 of the Department's Economic Regulations provides for the wet leasing of aircraft without regard to the identity of the wet lessor, and do not explicitly prohibit wet lease operations by a foreign air carrier on behalf of a U.S. carrier.

[2] On May 18, 2004, the Chief Counsel of the FAA issued an opinion that certain arrangements characterized as wet leases by the parties to the transaction were not true leases, because legal and actual possession of the subject aircraft never transferred from one party to the other. In addition, the FAA concluded that, where a foreign air carrier (identified as the lessor under such arrangements) retained operational control of the aircraft, the transaction was not subject to the wet lease prohibition of § 119.53(b). We have placed a copy of the FAA opinion in the Docket referenced above, and have also attached a copy to the service copy of this Notice.

[3] We have in other instances required foreign air carriers to seek statements of authorization under § 212.9(d) for various operations under that rule. See, for example, Orders 98–4–2 and 91–5–25.

In acting on a request by a foreign air carrier for a statement of authorization under part 212, OST must find that the operation meets the requirements of that rule and is in the public interest.[4] The applicant foreign air carrier must demonstrate that its proposed arrangement with the U.S. air carrier for the foreign carrier to conduct a flight or series of flights with the foreign air carrier's aircraft and crew in foreign air transportation for an authorized U.S. carrier meets these standards. In particular, one way in which the public interest standard of part 212 could be met would be for the foreign air carrier to show that (1) operational control of the flight or flights rests with it and not with the U.S. certificated air carrier; (2) legal and actual possession of the aircraft at all times will remain with the foreign air carrier; (3) the country that issued its air operator certificate (AOC) has been rated as Category 1 under the FAA's International Aviation Safety Assessment program; [5] and (4) the U.S. certificated air carrier involved has assessed the level of safety of the service to be provided by the foreign air carrier involved and has found it to be satisfactory.

The foreign air carrier may provide information on operational control by submitting, with its application for a statement of authorization, a copy of the agreement for the aircraft with crew that it has entered into with the U.S. certificated air carrier. In making a determination on operational control, the FAA will consider the terms of that agreement and all other relevant factors to ensure that the foreign air carrier will exercise authority over initiating, conducting or terminating a flight conducted under the agreement. Likewise, in determining whether the foreign air carrier retains actual and legal possession of the aircraft, the FAA will consider all relevant factors, including the foreign air carrier's right to substitute other aircraft for the aircraft identified in the agreement, or its right to use the aircraft identified in the agreement for its own purposes when the aircraft is not needed by the U.S. air carrier.

The U.S. certificated air carrier involved in the arrangement may demonstrate its assessment of the safety of the service by conducting a safety audit of the foreign air carrier under an FAA-approved safety audit program, comparable to the audits that U.S. carriers now perform under the OST/FAA Code-Share Safety Program. The FAA would review the safety audit along with the agreement for the aircraft with crew and provide the Department with the results of that review.[6]

Because these applications are handled on a case-by-case basis, applicants may, of course, endeavor to show that the foreign air carrier is in operational control and that the operation is in the public interest by providing information and evidence other than that outlined above, but the burden of making that showing is on the applicants.

To summarize applicable regulations, one way that a foreign air carrier may demonstrate a public interest basis under which it could make an arrangement (which may be characterized by the parties as a wet lease) to conduct a flight or series of flights with the foreign carrier's aircraft and crew for a U.S. carrier authorized to perform the relevant foreign air transportation is to show that:

—The foreign air carrier involved holds a foreign air carrier permit or exemption authority from OST to conduct charter operations;

—The country that issued the foreign air carrier's AOC is rated as Category 1 under the FAA's International Aviation Safety Assessment program;

—The operations to be conducted represent foreign air transportation and not prohibited cabotage, in accordance with 49 U.S.C. 41703;

—The foreign air carrier files an application for a statement of authorization for any such operation proposed;

—The foreign air carrier demonstrates that it will be in operational control of the proposed operation, for example, by providing with its application, for review by the FAA, copies of the agreement for the aircraft with crew, that it has entered into with the U.S. certificated air carrier;

—The foreign air carrier demonstrates that it will retain legal and actual possession of the aircraft;

—The foreign air carrier provides evidence that the U.S. certificated air carrier involved has conducted a safety audit of the foreign carrier, consistent with an FAA-approved safety audit program, and has submitted a report of that audit to the FAA for review;

—The FAA notifies OST that it has determined that operational control of the proposed flights rest with the foreign air carrier applicant, that the oversight of the operation will remain with the country that issued the foreign air carrier's AOC, and that the safety audit meets the standards of the U.S. certificated air carrier's safety audit program; and

—OST determines that the proposed operations meet the requirements of 14 CFR part 212 and are in the public interest, and grants the statement of authorization requested by the foreign air carrier.

We will publish this Notice in the **Federal Register**, and will serve this Notice on all U.S. certificated air carriers and all foreign air carriers holding OST authority.

Dated: February 15, 2008.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs, Department of Transportation.

Nicholas A. Sabatini,

Associate Administrator for Aviation Safety, Federal Aviation Administration.

[FR Doc. E8–3470 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–9X–P

[4] See 14 CFR § 212.11(a).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No.: FAA–2006–25414; Amendment Nos. 27–44 and 29–51]

RIN 2120–AH87

Performance and Handling Qualities Requirements for Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule provides new and revised airworthiness standards for normal and transport category rotorcraft due to technological advances in design and operational trends in normal and transport rotorcraft performance and handling qualities. The changes enhance the safety standards for performance and handling qualities to reflect the evolution of rotorcraft capabilities. This rule harmonizes U.S. and European airworthiness standards for rotorcraft performance and handling qualities.

DATES: These amendments become effective on March 31, 2008. Affected parties, however, do not have to comply with the information collection requirements of this rule until the OMB approves the FAA's request for this information collection requirement. The FAA will publish a separate document notifying you of the OMB Control Number and the compliance date(s) for the information collection requirements of this rule.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final

rule contact Jeff Trang, Rotorcraft Standards Staff, ASW–111, Federal Aviation Administration, Fort Worth, Texas 76193–0111; telephone (817) 222–5135; facsimile (817) 222–5961, e-mail *jeff.trang@faa.gov*. For legal questions concerning this final rule contact Steve Harold, Directorate Counsel, ASW–7G, Federal Aviation Administration, Fort Worth, Texas 76193–0007, telephone (817) 222–5099; facsimile (817) 222–5945, e-mail *steve.c.harold@faa.gov*.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements,'' Section 44702, ''Issuance of Certificates,'' and section 44704, ''Type certificates, production certificates, and airworthiness certificates.'' Under section 44701, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. Under section 44702, the FAA may issue various certificates including type certificates, production certificates, and airworthiness certificates. Under section 44704, the FAA shall issue type certificates for aircraft, aircraft engines, propellers, and specified appliances when the FAA finds that the product is properly designed and manufactured, performs properly, and meets the regulations and minimum prescribed standards. This regulation is within the scope of that authority because it would promote safety by updating the existing minimum prescribed standards used during the type certification process to reflect the enhanced performance and handling quality capabilities of rotorcraft. It would also harmonize this standard with international standards for evaluating the performance and handling qualities of normal and transport category rotorcraft.

Background

Due to technological advances in design and operational trends in normal and transport rotorcraft performance and handling qualities, new and revised airworthiness standards have been developed. Some current part 27 and part 29 regulations do not reflect safety levels attainable by modern aircraft and FAA-approved equivalent level of safety findings. In fact, it has been more than 20 years since the last major promulgation of rules that address rotorcraft performance and handling qualities (Amendments 29–24 and 27–21).[1] Since then, the FAA has developed policies and procedures that address certain aspects of these requirements to make the rotorcraft airworthiness standards workable within the framework of later rotorcraft designs and operational needs. Additionally, most rotorcraft manufacturers have routinely exceeded the minimum safety requirements in current part 27 and part 29 regulations.

History of the NPRM

On January 20, 1995, the FAA tasked the Performance and Handling Qualities Harmonization Working Group (PHQHWG) to ''review Title 14 Code of Federal Regulations part 27 and Appendix B, and part 29 and Appendix B, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of harmonizing performance and handling qualities requirements.'' The PHQHWG, which included broad membership from government authorities and industry representatives throughout the international rotorcraft community, met a total of ten times beginning in March 1995 to ensure participation by all interested parties early in the rulemaking process. Based on the recommendations of the PHQHWG, we published a notice of proposed rulemaking (NPRM 06–11) [2] in the **Federal Register** on July 25, 2006. The comment period for that NPRM closed on October 23, 2006.

Summary of Comments

The FAA received a total of 34 comments to the NPRM from four commenters: Erickson Air-Crane, Transport Canada, and three individuals, two of whom submitted their comments jointly. One commenter agreed with the proposed changes but had a comment relating to our economic evaluation. The remaining 33 comments related to specific proposed rule changes and included suggested changes, as discussed more fully in the discussion of the final rule below.

aircraft and its occupants, both direct and consequential, caused or contributed to by one or more failures, considering relevant adverse operation or environmental conditions.'' ARP4761 further states that, ''for each failure condition, the analyst must assign probability requirements.'' In existing

Discussion of the Final Rule

Weight Limits (§§ 27.25, 29.25)

The FAA proposed § 27.25(a)(1)(iv) to formalize previous equivalent level of safety findings by establishing a maximum allowable weight if the requirements in § 27.79 or § 27.143(c)(1) cannot be met. The equivalent level of safety is attained by prohibiting certain operations and including limitations in the Rotorcraft Flight Manual (RFM) that reflect the actual capability of the aircraft.

One commenter suggested that the proposed changes potentially lower the level of safety currently required under part 27 standards, are redundant and unnecessary, appear to delete the low-speed controllability requirements as a component in establishing the maximum weight under § 27.25(a)(1)(iii), and therefore should be withdrawn. The commenter stated that under the current standard the flight requirements that typically establish the maximum weight for a helicopter with a single main rotor are in-ground effect (IGE) hover performance (§ 27.73), height-velocity (§ 27.79), and low-speed controllability (§ 27.143). The commenter further stated that the structure of § 27.25 will always establish the maximum weight at a value that allows compliance with §§ 27.79 and 27.143(c)(1) because the applicant will always select the weights allowed by § 27.25(a)(1)(iii) to show compliance with §§ 27.73, 27.79 and 27.143. Under the scenario the FAA used to justify the proposed change (making an equivalent level of safety finding to § 27.143(c) and statements in advisory material for § 29.143(c) that relate to possible removal, under certain circumstances, of operating limitations based on any hover controllability condition), the commenter stated that the FAA intends to delete the low-speed controllability requirements of the current rule as parameters for establishing maximum weight. The commenter maintained that this would reduce the margin of safety for helicopter operations, particularly above sea level, and would require exceptional piloting skills or exceptionally favorable conditions in order to conduct safe operations. Such requirements are prohibited by certain regulations, such as § 27.51(a)(1).

We disagree with a majority of these comments. Proposed § 27.25(a)(1)(iv) is not redundant or unnecessary because it provides an additional standard, rather than a replacement standard, for determining the maximum weight. Recent certifications have resulted in rotorcraft designs that have been unable

to meet the current standards for controllability near the ground (§ 27.143 Controllability and maneuverability) while at the maximum weight established at 7,000 feet density altitude when meeting the standards for performance at minimum operating speed (§ 27.73) and for establishing the respective limiting height-speed envelope (§ 27.79). For those certification projects, we have permitted the applicant to show compliance through equivalent level of safety findings. In those cases, this new standard would allow for weight-altitude-temperature (WAT) limitations to be established for a part 27 rotorcraft that cannot meet the requirements of § 27.143(c) at 7,000 feet. The rotorcraft would then be required to operate within the weights, altitudes, and temperatures specified by those WAT limitations. This ''part 29 methodology,'' which imposes WAT limitations not usually required of normal category rotorcraft, therefore raises the minimum level of safety by restricting the aircraft from operating in those environmental conditions where the low-speed controllability requirements cannot be met.

As alluded to by the commenter, these equivalent level of safety prohibitions and limitations have historically been obtained through use of a certification methodology analogous to that for part 29 rotorcraft certification. They do not circumvent or eliminate the low speed controllability requirements for part 27 rotorcraft. As previously noted, one factor we have used in establishing WAT limitations is the low-speed controllability requirement of § 29.143(c). After these changes are effective, the low-speed controllability requirement of § 27.143(c) will remain a factor in establishing the WAT limitations. While we partially agree with the commenter's concerns about operating limitations being a greater workload on pilots, we do not believe that any new requirements proposed in this rule are beyond the scope of normal piloting responsibilities. Whether such data are provided in the Rotorcraft Flight Manual (RFM) as performance data or in the Limitations Section should not materially affect pilot workload. We agree with the commenter that certain environmental conditions may require increased pilot vigilance in determining wind speed and direction in order to adhere to some limitations and prohibitions. However, we believe that following such limitations should not require exceptional piloting skill. Furthermore, this standard does not reduce the margin of safety because, historically, such a margin of safety was maintained by an equivalent level of safety finding. Under the new standard, which adopts this equivalent level of safety as another alternative, prohibiting and limiting certain operations will maintain, not lower, that established level of safety. Accordingly, we are adopting the changes as proposed.

We proposed to amend § 29.25 by requiring that the maximum weights, altitudes, and temperatures demonstrated for compliance with § 29.143(c), which may also include wind azimuths, become operating limitations for Category B rotorcraft with a passenger seating capacity of nine or less. Such limitations are necessary to ensure safe aircraft operations within the demonstrated performance envelope of such rotorcraft.

Four comments were received regarding § 29.25. One commenter stated that the intent and applicability in this proposed rule change is confusing in the context of discussions associated with previous amendments to part 29 of the regulations and associated advisory material. The commenter recommended that the paragraph be rewritten to: (1) Clarify how this paragraph affects the relief granted to Category B rotorcraft at Amendment 29–24; (2) address maximum safe wind limitations in § 29.1583; and (3) make the paragraph applicable to all Category B rotorcraft, not just those having a passenger capacity of nine or less, if the intent of the change is to grant relief under certain conditions from any hover controllability conditions determined under § 29.143(c).

The FAA does not agree that the intent and applicability of the proposed change is confusing in the context of previous amendments to part 29 and the associated advisory material. As explicitly stated in the proposed change to § 29.25(a)(4) this paragraph of the regulation applies only to Category B rotorcraft with nine or less passenger seats. Even though there may be some imprecise wording in our advisory material, we chose to exclude Category B rotorcraft with ten or more passenger seats from this change to ensure that a higher level of safety is maintained for those transport category rotorcraft configured for 10 or more passenger seats. In short, we expect a higher level of safety to be applied to all Category A rotorcraft and most Category B rotorcraft. For those Category B rotorcraft having nine or less passenger seats, in prior certifications in which the current standards for controllability near the ground (§ 29.143(c)) could not be met, we have allowed the applicant to show compliance through an equivalent level of safety finding. We accepted these findings as providing the same level of safety as that for part 27 certifications, which also allows for configurations of no more than nine passenger seats. In those certification projects, this new standard would allow for demonstrated wind velocities and azimuths to be included as an operating limitation, which must be stated as such in the RFM. That is, for those part 29, Category B rotorcraft with nine or less passenger seats, we believe that by requiring the wind operating envelope to be a limitation, the proposed standard provides the same level of safety as in the standards prescribed by part 27, which also limits the seating capacity to nine or less passenger seats. This methodology is consistent with the standards adopted by Amendments 29–21 and 29–24, which, among other things, established different criteria for Category A and Category B rotorcraft certification in § 29.1 as a function of both aircraft weight and maximum passenger seating capacity. We believe that the proposed change is materially consistent with the current guidance material in Advisory Circular (AC) 29–2C, which only will need to be revised to reflect the requirement that the appropriate limitations be included in the RFM for these aircraft. Even though previous amendments did not specifically require that operating envelopes be included in the limitations section of the RFM for these aircraft, the proposed change makes this a requirement to further increase the safety standards. Further, because this standard deals with aircraft weight for various conditions—maximum weights, altitudes, and temperatures (WAT)—we opted to place the limitations requirement in this regulation, rather than in § 29.1583, to further emphasize that the maximum WAT conditions at which the rotorcraft can safely operate near the ground with maximum wind velocity are limitations and may also include other demonstrated wind velocities and azimuths.

Another commenter stated that revising the rule by addition of a new paragraph potentially lowers the level of safety established for part 29 standards; potentially shifts the burden for maintaining the currently established level of safety from the type design to the flight crew; and that maintaining the current version of § 29.25(a) is satisfactory and need not be changed. The commenter therefore recommended that the proposed change to § 29.25(a) be withdrawn. The commenter stated that the low-speed-controllability rule

consists of two elements, wind speed and weight. The commenter further stated that, under current regulations, all part 29 Category B rotorcraft are at a competitive disadvantage when compared to similarly-sized part 27 rotorcraft because, for part 27 rotorcraft, there is no requirement to take-off and land above 7,000 feet density altitude at a weight which allows all-azimuth low speed controllability in winds of at least 17 knots above 7,000 feet density altitude. The commenter asserts that part 29 transport category rotorcraft must be designed to operate at the maximum weight that allows compliance with § 29.143(c) at each takeoff and landing altitude. If the low speed requirement is deleted for part 29 Category B rotorcraft with nine or less passenger seats as proposed, the commenter believes the part 29 flight crew of these rotorcraft will be required to compensate by being more alert to the wind conditions when operating near maximum weight. Because the margin of safety currently provided by the part 29 design may no longer be included in the design of the rotorcraft, the commenter contends that this requirement would shift the burden for maintaining the currently established level of safety from the type design holder to the flight crew.

The FAA does not agree that these requirements will result in a lower safety standard for part 29 or that the requirement potentially shifts the burden for maintaining safety from the type design holder to the flight crew. Not only is this requirement a safety improvement, but critical safety information such as maximum weight, altitude, and temperature operating limits (which may include limited wind azimuths) would be listed in the Limitations Section of the RFM. Currently, we require that information to be placed in the Limitations Section of the RFM only for Category A rotorcraft. Our position as reflected in the preamble of the NPRM (82–12) [3] leading to Amendment 29–24, states, in part, ''The FAA considers the 17-knot controllability requirement an appropriate minimum safety requirement for Category A rotorcraft. * * * This proposal would add the requirement that the wind value be placed in the Flight Manual as a limitation for Category A rotorcraft. * * * In roles envisioned for utility rotorcraft and those carrying less than 10 passengers, takeoffs and landings are frequently conducted from sites where wind information is not readily obtainable. To require this wind information as an operating limitation for Category B is impractical.'' However, we have reevaluated our position relating to operating limitations and are now requiring this information for Category B rotorcraft with nine or less passenger seats be placed in the Limitations Section, for the same reasons described in our disposition of the first three comments to this section.

The commenter is correct that, under current regulations, all part 29 Category B rotorcraft must be designed to operate at the maximum weight that allows compliance with § 29.143(c) at each takeoff and landing altitude, and that for part 27 rotorcraft, there is no requirement to demonstrate all-azimuth low speed controllability in winds of at least 17 knots, above 7,000 feet density altitude and at the maximum weight. The commenter stated that this places part 29, Category B rotorcraft at a competitive disadvantage when compared to similarly-sized part 27 rotorcraft. We disagree. For Category B rotorcraft having nine or less passenger seats, in prior certifications in which the current standards for controllability near the ground (§ 29.143(c)) could not be met, we have allowed the applicant to show compliance through equivalent level of safety findings. We accepted these findings as providing the same level of safety as that for part 27 certifications, which also allows for no more than nine passenger seats, by allowing operating limitations in the RFM which may include wind velocities and azimuths. In those certification projects, this new standard would allow for demonstrated wind velocities and azimuths to be included as an operating limitation in the RFM. That is, for those part 29, Category B rotorcraft with nine or less passengers, we believe that by requiring wind operating envelope to be a limitation, the new standard provides the same level of safety as in the standards prescribed by part 27, which also limits the seating capacity to nine or less passenger seats.

As discussed earlier, the FAA did not intend to delete the low speed requirement for part 29 Category B rotorcraft with nine or less passenger seats. One factor we have used in establishing WAT limitations is the low-speed controllability requirement of § 29.143(c), which this final rule now formalizes.

Performance at Minimum Operating Speed (New § 27.49)

We proposed to re-designate § 27.73 as § 27.49 and add a requirement to determine the out-of-ground effect (OGE) hover performance, because OGE operations have become commonplace. The proposed change mandates that OGE hover data be determined throughout the range of weights, altitudes, and temperatures; most manufacturers already present this data in the RFM.

The FAA received a comment, outside of our proposed rule change, suggesting that in this final rule, where we are re-designating § 27.73 as § 27.49, that we revise paragraph (a)(2)(ii) to encompass the entire flight envelope requested by the applicant, including the temperature-altitude hover ceiling requirements where the temperature at sea level is well above the minimum standard 100 °F condition envisioned in § 27.1043(b). The commenter further stated that, if we adopt their suggested change to re-designate § 27.49(a)(2)(ii), for consistency we should revise §§ 27.51, 27.79(a)(1) and (a)(2), and 27.143(c)(1) to require turbine-powered rotorcraft to demonstrate compliance at maximum weight from sea level at temperatures established under § 27.1043(b) to 2,500 feet pressure altitude at a temperature corresponding to the established sea level temperature decreased by the standard lapse rate. The commenter also stated that the FAA should consider revising the 7,000 feet density altitude standard in proposed §§ 27.51(b), 27.79(a)(1), and 27.143(c)(1) and (c)(2) to 7,000 feet density altitude with temperature corresponding to the sea level temperature established in compliance with § 27.1043(b) decreased by the standard lapse rate. The commenter further stated that these changes would acknowledge the increased capability of turbine-powered rotorcraft by requiring compliance at the edge of the envelope requested, not to a single density altitude, which may not reflect the intended operational envelope of the rotorcraft. Although this comment may have merit, it is beyond the scope of our proposals and is not adopted. We may consider it in future rulemaking actions. Accordingly, it is adopted as proposed.

Takeoff (§ 27.51), Landing (§ 27.75), and Engines (§ 27.903)

We received no comments on these proposals; all three are adopted as proposed.

We proposed to revise § 27.51 to recognize in the standard that the most critical center-of-gravity (CG) may not be the extreme forward CG, and require that tests be performed at the most critical CG configuration and at the maximum weight for which takeoff certification is requested. Further, we proposed to clarify the requirement to

[3] 47 FR 37806–01, August 26, 1982, Docket # 23266.

demonstrate safe landings after an engine failure at any point along the takeoff path up to the maximum takeoff altitude or 7,000 feet, whichever is less, to explicitly state that the altitudes cited are density altitudes.

We proposed to revise § 27.75(a) to: (1) State the required flight condition in more traditional rotorcraft terminology; (2) require multi-engine helicopters to demonstrate landings with one engine inoperative and initiated from an established approach; and (3) replace the word ''glide'' with the word ''autorotation.''

We proposed to add paragraph § 27.903(d) to require engine restart capability, which is a fundamental necessity for any aircraft to minimize the risk of a forced landing. A restart capability will enhance safety, even if it may not be useful in every case such as when engine damage exists or when there is insufficient altitude to implement the engine restart procedure. We intend that the restart procedure be included in the RFM.

Glide Performance (§ 27.71)

One commenter noted that the word ''glide'' has been replaced with ''autorotation'' in the proposed text of § 27.143. However, the title of § 27.71 remains ''Glide Performance.'' The commenter recommended that the title of § 27.71 be changed to ''Autorotation Performance,'' to provide consistency with the proposed changes. The FAA agrees with the comment and the title has been changed.

Performance at Minimum Operating Speed (§ 27.73)

One commenter noted that in our proposed re-designation of current § 27.73 to § 27.49, we proposed to change the ambient temperature in paragraph (a)(2)(ii) from ''° F'' to ''° C.'' Consequently, the commenter recommended that all sections of part 27 containing temperature callouts likewise be revised. We disagree. The NPRM does not change the ambient temperature callout from degrees-Fahrenheit to degrees-Celsius. Rather, it recognizes degrees-Celsius in addition to degrees-Fahrenheit when making the temperature callout. Incorporating similar changes to other temperature callouts will be considered for future changes to part 27. Accordingly, the change is adopted as proposed.

Limiting Height—Speed Envelope (§ 27.79)

We proposed to revise § 27.79(a)(1) to include the words ''density altitude'' after ''7,000 feet.'' We also proposed to revise § 27.79(a)(2) by removing ''lesser'' from the first sentence, reflecting that current OGE weights for helicopters are not necessarily less than the maximum weight at sea level. Finally, we proposed to remove the term ''greatest power'' from § 27.79(b)(2) and replace it with language that more clearly states the power to be used on the remaining engine(s) for multi-engine helicopters. This ''minimum installed specification power'' is the minimum uninstalled specification power corrected for installation losses.

One commenter to the proposed language suggested that the FAA seems to be aligning the sections of part 27 with part 29, as was proposed with the re-designation of § 27.73 as § 27.49. Consequently, the commenter recommended that § 27.79 be re-designated as § 27.87. The FAA agrees that this paragraph re-designation better aligns the requirements for performance at minimum operating speed in part 27 and part 29. Furthermore, the re-designating of the paragraph is administrative in nature and imposes no additional requirements on applicants. Accordingly, the recommendation is adopted as proposed.

The second commenter noted that since the height-velocity (H–V) envelope for part 27 aircraft is not a limitation, the word ''limiting'' should be deleted from the title of § 27.79 and from any other references to the H–V envelope contained in part 27. The FAA agrees with the comment, since § 27.1587 requires that the H–V envelope be published in the RFM as performance information. Accordingly, the title of the paragraph is changed.

Controllability and Maneuverability (§§ 27.143, 29.143)

We proposed to revise §§ 27.143(a)(2)(v) and 29.143(a)(2)(v) to replace the word ''glide'' with ''autorotation.'' We proposed to re-designate portions of § 27.143, and to rewrite §§ 27.143(c) and 29.143(c) to more clearly state that controllability on or near the ground must be demonstrated throughout a range of speeds from zero to at least 17 knots. We also proposed to clarify the altitude requirement with the addition of the words ''density altitude.'' We further proposed to revise § 27.143(c)(2) to require that controllability be determined at altitudes above 7,000 feet density altitude if takeoff and landing are scheduled above that altitude. Lastly, we proposed to add §§ 27.143(d) and 29.143(d), to require the determination of controllability for wind velocities from zero to at least 17 knots OGE at weights selected by the applicant. These proposed changes, together with the new OGE hover requirement of § 27.49, would increase the level of safety by requiring additional performance information.

Relative to both sections 27.143 and 29.143, one commenter noted that the reference to ''paragraph (e)'' in paragraph (b)(4) of the current rule (which we did not propose to change in the NPRM) should be changed to read ''paragraph (f).'' The FAA agrees. As indicated in the NPRM, we proposed to re-designate §§ 27.143 and 29.143 paragraphs (d) and (e) as paragraphs (e) and (f), respectively. However, we failed to propose to change the reference in paragraphs in §§ 27.143 and 29.143(b)(4) from paragraph (e) to paragraph (f). That is, we gave no indication that we proposed to delete the exception enumerated in (b)(4) to exclude helicopters from the (b)(4) requirement if the helicopter demonstrates compliance with current paragraph (e) (re-designated paragraph (f)). Because these paragraph re-designations, as well as the unchanged provisions of paragraph (b), were intended only to continue the current requirements, we believe changing the reference in paragraph (b)(4) from (e) to (f) is non-substantive, constitutes a correction of an error, is consistent with our intended changes without which the proposed change would have unintended consequences, and continues the current standard to exclude the same helicopters from the provisions of paragraph (b)(4). We have changed the reference in the final rule.

A second comment stated that the NPRM proposes to add requirements to determine low-speed controllability: (1) Near the ground for takeoff and landing altitudes above 7,000 feet density altitude, and (2) for OGE for the altitude range from standard sea level to the maximum takeoff and landing altitude capability of the aircraft. The commenter stated that under § 27.25(a), the weight selected by the applicant to establish the all-azimuth wind velocities would be a factor in determining the maximum weight. The commenter stated that this weight would undoubtedly be much less than the maximum weight determined under the current rule and thus would make the rotorcraft less competitive. Further, the commenter assumes that the intent of the proposal is to develop additional performance information beyond that currently available, to assist the flight crew. The commenter stated that if these assumptions are true, the NPRM should be revised to clearly indicate that the proposed paragraphs are not applicable as flight requirements when establishing the maximum weight under § 27.25(a).

The FAA does not agree. As noted in the NPRM, the intent of the proposed language is to increase the level of safety by providing additional performance information in the RFM. This is further reflected in the proposed § 27.1587(a)(2), which proposed to explicitly require presentation of performance information found in meeting the requirements of the proposed § 27.143. Consequently, the new § 27.143(d)(4) will not be used in determining the rotorcraft's maximum weight under § 27.25(a). Except for the reference change in paragraph § 27.143(b)(4), the changes are adopted as proposed.

Another comment suggests that we used the word ''manner'' instead of ''maneuver'' in proposed § 29.143(c). The proposed requirement reads, in part, ''* * * the rotorcraft can be operated without loss of control on or near the ground in any manner appropriate to the type. * * *'' The commenter suggests that the word ''manner'' should be changed to ''maneuver'' because the latter is used in the current requirement and also in the proposed and current requirement in § 27.143(c). We agree. The word ''manner,'' as used in the proposed text, is an error. We intended to use the word ''maneuver'' in proposed § 29.143(c) and we have made that non-substantive change in this final rule.

Static Longitudinal Stability (§§ 27.173, 29.173)

We proposed to clarify §§ 27.173(a) and 29.173(a) by changing ''a speed'' to ''airspeed.'' We also proposed to combine paragraphs (b) and (c) to allow neutral or negative static stability in limited areas of the flight envelope, if adequate compensating features are present and the pilot can maintain airspeed within five knots of the desired trim airspeed under the conditions of §§ 27.175 and 29.175. Such neutral or negative static stability in limited flight domains have been allowed for numerous rotorcraft under equivalent level of safety findings. Lastly, we proposed to delete the §§ 27.173(c) and 29.173(c) requirements relating to the hover demonstration in current §§ 27.175(d) and 29.175(d).

We received no substantive comments relative to the proposed changes to § 27.173. One commenter noted that the proposed revision to § 29.173(b) has an open parenthesis mark in front of the ''5 knots'' and suggested that open parenthesis mark should be a ''±'' symbol. We agree and have made that change in the final rule. The other proposed changes have been adopted as proposed.

Demonstration of Static Longitudinal Stability (§§ 27.175, 29.175)

We proposed to decrease, in paragraphs (a) and (b) of §§ 27.175 and 29.175, the airspeed range about the specified trim speeds to more representative values than are currently contained in the rule. We also proposed to add a new paragraph (c) to require an additional level flight demonstration point, at a trim airspeed of $V_{NE} - 10$ knots, because the data coverage under the current cruise demonstration speed in modern helicopters may no longer represent a normal variation about a trim point. Additionally, we proposed to re-designate the current paragraph (c) as paragraph (d), and to delete the current paragraph (d) containing the hover demonstration, as the safety considerations associated with hovering flight are adequately addressed by §§ 27.143(a) and 29.143(a), respectively.

One commenter suggested that discrepancies may exist between § 27.175(d)(1) and (2), and §§ 27.67 and 27.71. Specifically, § 27.175 requires that static longitudinal stability be demonstrated in autorotation about the airspeeds for minimum rate-of-descent and best angle-of-glide. However, § 27.71 requires that the minimum rate of descent and the best angle of glide airspeeds be determined only for single engine helicopters and multiengine helicopters that do not meet Category A engine isolation requirements. Therefore, the commenter stated that this requirement would not apply to multi-engine helicopters that meet Category A engine isolation requirements. The commenter recommended that these sections be reconciled for part 27 designs that meet Category A engine isolation requirements. The FAA does not agree that any action is necessary. While § 27.71 does not have an explicit requirement to determine these two autorotation speeds for part 27 rotorcraft that meet Category A engine isolation requirements, § 27.141 requires that the rotorcraft demonstrate satisfactory flight characteristics for ''any condition of speed, power, and rotor r.p.m. for which certification is requested; * * *.'' Further, the two trim airspeeds explicitly cited in the proposed rule are intended to provide data at the most likely operating conditions flown during an autorotation, thereby providing a higher level of safety. Consequently, we are adopting the language as proposed.

One commenter stated that the proposed revision to paragraph § 29.175(b) reads, ''* * * in the climb condition at speeds from $V_y - 10$ kt, to $V_y + 10$ kt. * * *'' The commenter recommended that we delete the comma after ''$V_y - 10$ kt.'' We agree. That comma in the proposed text is a typographical error and has been removed in this final rule. Otherwise, the changes are adopted as proposed.

Static Directional Stability (§§ 27.177, 29.177)

We proposed to revise §§ 27.177 and 29.177 to provide further objective criteria over which the directional stability characteristics are evaluated. We also proposed to allow for a minimum amount of negative stability around each trim point, which does not materially affect the overall safety considerations of static directional stability.

One commenter noted a typographical error in the proposed text of § 27.177, in that paragraph (a)(1) has an open parenthesis mark in front of ''10 degrees'' and suggests that it should be a ''±'' symbol. We agree and have corrected that error in § 27.177(a)(1) of this final rule. Otherwise, the proposal is adopted as proposed.

Two comments were received regarding § 29.177. In the first comment, Transport Canada stated that they do not think that § 29.177(a)(1) makes sense in relation to § 29.177(a). They recited what they assumed we meant by the proposal and stated that ''paragraph 29.177(a)(1) specifies a range of sideslip angles and the lesser sideslip angle in this range will always be the smallest angle in the range.'' We do not agree and have not made any changes based on this comment. We believe that the commenter has misinterpreted our meaning in the ''* * * sideslip angles up to the lesser of—'' language in proposed § 29.177(a). This language modifies the four options listed in paragraphs § 29.177(a)(1) through § 29.177(a)(4) and is intended to mean the lesser value found from each of those four subsequent paragraphs. Paragraph 29.177(a)(1) is intended to provide options of sideslip angles from trim that are 50° wide (+25° to −25°) at the minimum-rate-of-descent airspeed less 15 knots, then varying linearly and narrowing to 20° wide (+10° to −10°) at the V_{ne} airspeed.

The second commenter suggested that the phrase in proposed § 29.177(c) that reads ''paragraph (a) of this paragraph'' be changed to read ''paragraph (a) of this section.'' We agree. The correct reference is to paragraph (a) of § 29.177. Except for changing the word ''paragraph'' to ''section'' for proposed § 29.177(c), the other changes are adopted as proposed.

Performance Information (§§ 27.1587, 29.1587)

We proposed to revise § 27.1587(a) to include reference to new § 27.49. We also proposed to revise § 27.1587(a)(2)(i) and (ii) to specifically include requirements for presenting maximum safe winds for OGE operations established in proposed § 27.143. Lastly, we proposed to delete § 27.1587(b)(1)(i) and (ii), which were moved into § 27.1585(a) by Amendment 27–21 and inadvertently left in § 27.1587.

Three comments were received regarding § 27.1587. The first commenter suggested that the term ''maximum wind value'' in § 27.1587(a)(2)(ii) could be confusing and ambiguous and recommended that the term ''maximum wind value'' be replaced with ''in winds of not less than 17 knots from all azimuths.'' We disagree. The requirements of this proposed rule assume that the requirements of § 27.143(c) can be met by the applicant. The proposed change seeks to ensure that appropriate performance information will be included in the RFM, whether it is 17 knots or some higher demonstrated value.

The second commenter suggested that § 27.1587(a)(2)(ii) is in conflict with the proposed § 27.143(c)(2) and (3). Specifically, the former paragraph uses the term ''maximum weight,'' while the latter two allow the applicant to select a weight, which may be less than the maximum weight. The FAA disagrees. The proposed text of § 27.1587(a) explicitly requires that the RFM contain information determined in accordance with § 27.143(c) and (d). The term ''maximum weight,'' subsequently used in paragraph (a)(2)(ii) is intended to be a further description of the maximum weight used when demonstrating compliance with § 27.143(c) and (d).

The third comment stated that the FAA has no formal definition of ''maximum safe wind,'' nor is there a flight requirement to demonstrate a ''maximum safe wind.'' The commenter recommended that the FAA explain the term and include definitions in part 27 and part 29. The FAA agrees that the comment may have merit. However, the term is currently used in both part 27 and part 29, and has been used throughout the history of these regulations, to include Civil Air Regulations 6 and 7, predecessors to this regulation. Development of a formal definition may be evaluated for incorporation in future rulemaking. Accordingly, the changes are adopted as proposed.

We proposed to revise § 29.1587 to require new performance information be included in the RFM, including the requirement for presenting maximum safe winds for OGE operations.

A commenter stated that the proposed paragraphs (a)(7) and (b)(8) require, in part, ''* * * the maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover in-ground-effect and out-of-ground effect in winds of not less than 17 knots. * * *'' The commenter stated that the requirement is redundant, is not pertinent to a paragraph referring only to OGE hover performance, and that other paragraphs of § 29.1587 already contain the in-ground-effect (IGE) hovering requirement. The commenter recommended that the IGE requirement be deleted from each proposed paragraph. We agree that the ''in-ground-effect'' requirement is redundant and unnecessary. In adopting the changes to this section, we have deleted the ''in-ground-effect'' hovering requirement from the proposed § 29.1587(a)(7) and § 29.1587(b)(8).

The commenter further stated that the proposed paragraphs (a)(7) and (b)(8) conflict with the proposed revision to § 29.143(d). Specifically, proposed paragraphs (a)(7) and (b)(8) require the applicant to publish performance data for the ''maximum weight,'' whereas proposed § 29.143(d) allows a ''weight selected by the applicant'' when demonstrating the OGE requirement. The commenter stated that the ''weight selected by the applicant'' may not be the ''maximum weight.'' Therefore, the commenter recommended that § 29.1587(a)(7) and (b)(8) be changed to reflect the ''weight selected by the applicant'' as stated in § 29.143(d). We disagree. Proposed § 29.143(d) does allow for a ''weight selected by the applicant'' for the controllability and maneuverability standards. However, the proposed § 29.1587(a)(7) and (b)(8) also require that OGE performance data be provided at minimum operating speeds under § 29.49 over the ranges of ''weight, altitude, and temperature'' for which certification is requested, in addition to performance data at the maximum weight for each altitude and temperature at which the helicopter can hover safely in winds of not less than 17 knots from all azimuths. Consequently, the intent of this final rule is to require new OGE hover performance data be provided at the maximum weight used to demonstrate compliance with §§ 29.49 and 29.143(d).

The commenter stated that § 29.1587(b)(2) could be revised to more clearly indicate that the hover ceiling data is for IGE hovering. We agree that making specific reference to the IGE hover ceiling, adds clarification, and removes any ambiguity in the requirement. Accordingly, the recommendation is adopted.

The commenter also suggested that since § 29.1587(b)(8) uses the term ''winds of at least 17 knots from all azimuths,'' it ''would seem reasonable to expect paragraph (b)(4) to be similarly changed.'' We do not agree. Section 29.1587(b)(4) assumes that the requirements of § 29.143(c) for critical conditions can be met during IGE operations. Consequently, the requirements of (b)(4) ensure that, if a higher wind value exists that could present an unsafe condition, the consideration of those higher wind values are reflected in the appropriate performance information in the RFM for the maximum safe winds for operations near the ground. Conversely, paragraph (b)(8) requires presentation of the maximum weight at which the rotorcraft can hover OGE in 17-knot winds from any azimuth.

The commenter questioned why we proposed to remove the term ''maximum safe wind'' from current § 29.1587(a)(7) and replace it with ''maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover in-ground-effect and out-of-ground effect in winds of not less than 17 knots from all azimuths.'' The commenter noted that in § 29.1587(b)(8) the FAA proposed to continue to use the current terminology ''maximum safe wind'' but add an ''almost separate and distinct parameter,'' that is to say, ''maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover in-ground-effect and out-of-ground effect in winds of not less than 17 knots from all azimuths,'' the exact language we proposed as replacement language in paragraph (a)(7). The commenter stated that there is some apparent confusion over the definition and use of the term ''maximum safe wind.'' The commenter further postulated that in the proposed paragraph (a)(7), standard maximum safe wind seems to be equated with winds established for all-azimuth low speed controllability as defined in § 29.143(c). Conversely, proposed paragraph (b)(8) seems to treat maximum safe wind as something other than winds established for all-azimuth low speed controllability. The commenter believes that ''maximum safe wind'' could be viewed as a range of wind speeds and azimuths for safe operation where the wind speed is neither less than the wind speed established by § 29.143(c) nor more than

the demonstrated speed, particularly in non-critical azimuth ranges. The commenter stated that the FAA has neither a formal definition of ''maximum safe wind'' nor a flight requirement to demonstrate a ''maximum safe wind,'' and therefore recommended that the FAA explain the term and include a formal definition in part 27 and part 29. The FAA disagrees. In paragraphs (a)(7) and (b)(8), we proposed to more explicitly relate these requirements to those of § 29.143. The term ''maximum safe wind'' is also included in paragraph (b)(8) to provide for the presentation of additional wind speeds and azimuths in which Category B rotorcraft may be safely operated. While this term is not formally defined, it has been used in the certification standards since the existence of Civil Air Regulations 6 and 7; development of a formal definition will be evaluated in future rule changes. We did not make any changes to § 21.1587 based on these comments.

Airworthiness Criteria of Helicopter Instrument Flight (Appendix B to Part 27 and Appendix B to Part 29)

We proposed to amend paragraph V(a) to allow for a minimal amount of neutral or negative stability around trim and to replace the phrase ''in approximately constant proportion'' with ''without discontinuity.'' We also proposed to require that the pilot be able to maintain the desired heading without exceptional skill or alertness. Additionally, we proposed to reorganize paragraphs VII(a)(1) and VII(a)(2) and to revise them to specify the standards that must be met when considering a stability augmentation system failure. Finally, in paragraph V(b) of Appendix B to Part 29, we proposed to replace the word ''cycle'' with the correct word, ''cyclic.''

One commenter noted that, in the proposed change to paragraph VII(a) of Appendix B to Part 27 and Part 29, we replaced the term ''failure condition'' with the term ''failure.'' The commenter stated that, ''in the context of a systems safety assessment a 'failure' and a 'failure condition' are two distinctly different things'' and that the proposed change represents an alleviation. Consequently, the commenter stated support for reinstating the original term ''failure condition'' as intended by the ARAC Performance and Handling Qualities Working Group. Although not stated specifically in the comment, we believe that the commenter is suggesting that the word ''condition'' be inserted after the word ''failure'' in the second and third sentences of paragraph VII(a). We agree that we should insert the word ''condition'' in the two places in paragraph VII(a) but do not agree that, as stated, the proposal lessens the safety standard. Rather, we believe that omitting the term ''condition,'' as proposed in the NPRM, could result in a perceived change to the requirements for the systems safety assessment for instrument flight certification or could create confusion in future certification activities since its use would not be consistent with other current regulations, advisory material, and industry practice. No such change was intended by the proposal.

SAE Aviation Recommended Practice, ARP4761, defines the term ''failure'' as ''a loss of a function or a malfunction of a system or a part thereof.'' It further defines the term ''failure condition'' as ''a condition with an effect on the aircraft and its occupants, both direct and consequential, caused or contributed to by one or more failures, considering relevant adverse operation or environmental conditions.'' ARP4761 further states that, ''for each failure condition, the analyst must assign probability requirements.'' In existing certification activities, we accept these definitions for assigning probability requirements. In application, the five probability classifications (frequent, reasonably probable, remote, extremely remote, and extremely improbable) are intended to relate to an identified ''failure condition'' resulting from or contributed to by the improper operation or loss of a function or functions and not to the reliability of specific components or systems. The FAA intends that the term ''failure condition'' relate to the assignment of a probability requirement (in this case, ''extremely improbable'') to the ''failure condition,'' and not to the ''failure'' itself. In this standard, a Stability Augmentation System (SAS) failure condition, under these definitions, requires that the applicant take into consideration that the operation is made during instrument flight.

Because we are concerned that this proposal may be viewed as an inadvertent change to the safety standard and the system safety analysis requirements associated with SAS for instrument flight certification, we have changed the proposed standard and now use the term ''failure condition'' in the suggested two locations in paragraph VII(a). This change is consistent with the intent of the proposed standard, current industry practice, and is the same terminology used elsewhere in our regulations and guidance material. The change is further consistent with our goal of maintaining harmonized certification standards with the European Aviation Safety Agency (EASA). The remaining proposals are adopted without change.

Appendix C to Part 27 Criteria for Category A

One commenter recognized that we did not propose to change Appendix C to part 27, but suggested that since we are proposing to revise the low speed controllability section of part 27, we should also require all-azimuth low speed controllability in winds of not less than 17 knots at all weights, altitudes and temperatures where Category A takeoff and landing operations are requested for certification. The commenter stated that current Appendix C to part 27 does not require that part 27 rotorcraft certificated for Category A operations meet the low speed controllability requirements of § 29.143(c) because that requirement is not listed in paragraph C27.2 of Appendix C to part 27. The commenter speculated that perhaps ''we reasoned that since the low speed controllability requirements of § 27.143(c) and § 29.143(c) are identical, there was not a need to repeat a requirement already in place.'' However, the commenter stated that there is a difference; specifically with regards to the altitude range over which the two rules apply. The commenter stated that § 27.143(c) applies only from sea level to 7,000 feet density altitude, while § 29.143(c) applies to all altitudes and temperature for takeoff and landing requested for certification. The commenter stated that part 27 rotorcraft certificated for Category A operations should meet the same level of safety as that for transport category rotorcraft. We disagree. Part 27 rotorcraft certificated for Category A operations were not intended to meet the same level of safety as that for transport category rotorcraft. If this were the case, Appendix C to part 27 would have included all the part 29 requirements for Category A, particularly where differences exist between part 27 and part 29. Indeed, different Category A certification requirements exist for part 29 rotorcraft, as a function of aircraft weight and passenger seating capacity.

Performance at Minimum Operating Speed (New § 27.49)

We proposed to re-designate § 27.73 as § 27.49 and add a requirement to determine the OGE hover performance, because such operations have become commonplace. The proposed change mandates that OGE hover data be determined throughout the range of weights, altitudes, and temperatures;

most manufacturers already present this data in the RFM.

Concerning this re-designation of § 27.73 as § 27.49, a commenter suggested that we revise paragraph (a)(2)(ii) to encompass the entire flight envelope requested by the applicant, including the temperature-altitude hover ceiling requirements, where the temperature at sea level is well above the minimum standard 100°F condition envisioned in § 27.1043(b). The commenter further stated that, if we adopt the suggested change to re-designate § 27.49(a)(2)(ii), for consistency we should revise §§ 27.51, 27.79(a)(1) and (a)(2), and 27.143(c)(1) to require turbine-powered rotorcraft to demonstrate compliance at maximum weight from sea level at temperatures established under § 27.1043(b) to 2,500 feet pressure altitude at a temperature corresponding to the established sea level temperature decreased by the standard lapse rate. The commenter also stated that the FAA should consider revising the 7,000 feet density altitude standard in proposed §§ 27.51(b), 27.79(a)(1), and 27.143(c)(1) and (c)(2) to 7,000 feet density altitude with temperature corresponding to the sea level temperature established in compliance with § 27.1043(b) decreased by the standard lapse rate.

The commenter stated that these changes would acknowledge the increased capability of turbine-powered rotorcraft by requiring compliance at the edge of the requested envelope, not to a single density altitude, which may not reflect the intended operational envelope of the rotorcraft. Although this comment may have merit, it is beyond the scope of our proposals and is not adopted. We may consider it in future rulemaking actions.

Takeoff (§ 27.51), Landing (§ 27.75), and Engines (§ 27.903)

We received no comments on our proposed changes to these sections. All are adopted as proposed, but are included here for informational purposes.

We proposed to revise § 27.51 to recognize in the standard that the most critical center-of-gravity (CG) may not be the extreme forward CG, and require that tests be performed at the most critical CG configuration and at the maximum weight for which takeoff certification is requested. Further, we proposed to clarify the requirement to demonstrate safe landings after an engine failure at any point along the takeoff path up to the maximum takeoff altitude or 7,000 feet, whichever is less, to explicitly state that the altitudes cited are density altitudes.

We proposed to revise § 27.75(a) to: (1) State the required flight condition in more traditional rotorcraft terminology; (2) require multi-engine helicopters to demonstrate landings with one engine inoperative and initiated from an established approach; and (3) replace the word ''glide'' with the word ''autorotation.''

We proposed to add paragraph § 27.903(d) to require engine restart capability, which is a fundamental necessity for any aircraft to minimize the risk of a forced landing. A restart capability will enhance safety, even if it may not be useful in every case, such as when engine damage exists or when there is insufficient altitude to implement the engine restart procedure. We intend to include the restart procedure in the RFM.

Economic Evaluation

Regarding our economic determination, Erickson Air-Crane Incorporated asked that we correct the *Regulatory Flexibility Determination* section to show that Erickson is a part 29, rather than a part 27, rotorcraft manufacturer; has 600 employees rather than 500; and suggested that we recalculate the percentages in the Annual Revenue table based on these changes. We concur. We have made these changes and do not believe that they materially change the economic determination of this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. An agency may not collect or sponsor the collection of information, nor may it impose an information requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

As required by the Act, we submitted a copy of the new information requirements to OMB for their review when we published the NPRM. Additionally, in the NPRM, we solicited comments from the public on the proposed new information collection requirements. No comments relating to the proposed new information collection requirements were received. Affected parties, however, do not have to comply with the information collection requirements of this rule until the OMB approves the FAA's request for this information collection requirement. The FAA will publish a separate document notifying you of the OMB Control Number and the compliance date(s) for the information collection requirements of this rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no ''differences'' with these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade

Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic

impact on a substantial number of small entities; (5) will not have a significant effect on international trade; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the monetary threshold identified. These analyses are summarized below.

Total Benefits and Costs of This Rulemaking

The estimated cost of this final rule is about $558,250 ($364,955 in present value). The estimated potential benefits of avoiding at least one helicopter accident are about $3.9 million ($2.7 million in present value).

Who is Potentially Affected by This Rulemaking?

- Operators of U.S.-registered part 27 or 29 rotorcraft, and
- Manufacturers of part 27 or 29 rotorcraft.

Our Cost Assumptions and Sources of Information

- Discount rate—7%.
- Period of analysis—10 years. During this period manufacturers will seek new certifications for one large and one small part 27 and two large part 29 rotorcraft.
- Value of fatality avoided—$3.0 million (Source: ''Economic Values for FAA Investment & Regulatory Decisions'' (March 2004)).

Benefits of This Rule

The benefits of this final rule consist of the value of lives and property saved due to avoiding accidents involving part 27 or 29 rotorcraft. Over the 10-year period of analysis, the potential benefit of this final rule will be at least $3.9 million ($2.7 million in present value) by preventing one accident.

Cost of This Rule

We estimate the costs of this final rule to be about $558,250 ($364,955 in present value) over the 10-year analysis period. Manufacturers of 14 CFR part 27 rotorcraft will incur costs of $383,250 ($234,039 in present value) and manufacturers of 14 CFR part 29 helicopters will incur costs of $175,000 ($130,916 in present value).

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This Final Regulatory Flexibility Analysis examines the potential costs and benefits to small business entities of a final rule on new and revised performance and handling requirements for rotorcraft. The rule is intended to revise the flight certification requirements to incorporate flight test procedures for performance and handling qualities that reflect the evolution of rotorcraft capabilities since the last major revisions to this rule.

In addition the rule reflects an international effort to have common rotorcraft certification requirements.

We used the Small Business Administration guideline of 1,500 employees or fewer per firm as the criterion for the determination of a small business in commercial air service.[4]

In order to determine if the final rule will have a significant economic impact on a substantial number of small entities, a list of all U.S. rotorcraft manufacturers, who must meet normal and transport category rotorcraft airworthy standards under 14 CFR parts 27 and 29, respectively was developed.

Using information provided by three sources: The World Aviation Directory, Dunn and Bradstreet's company databases, and SEC filings through the Internet, we examined the publicly available revenue and employment of all businesses, and eliminated those with more than 1,500 employees and subsidiaries of larger businesses.

The results of this methodology are displayed on Table VII–1 showing 4 U.S. part 27 rotorcraft manufacturers with fewer than 1,500 employees and one part 29 rotorcraft manufacturer with fewer than 1,500 employees.

One comment was received on the NPRM regulatory flexibility section. The comment was from Erickson Air-Crane. The regulatory flexibility analysis section of the NPRM listed Erickson Air-Crane as a part 27 manufacturer with 500 employees. Erickson Air-Crane commented that they are a part 29 manufacturer with 600 employees. The information provided by Erickson Air-Crane was used in the preparation of this final regulatory flexibility determination.

TABLE VII–1.—U.S. SMALL BUSINESS ROTORCRAFT MANUFACTURERS

No.	Name	Employment
	Part 27	
1	Hiller Aircraft Corp	35
2	Brantley Helicopter Industry	35
3	Enstrom Helicopter Corporation	100
4	Robinson Helicopter Company, Inc	700

[4] 13 CFR 121.201, Size Standards Used to Define Small Business Concerns, Sector 48–49 Transportation, Subsector 481 Air Transportation.

TABLE VII–1.—U.S. SMALL BUSINESS ROTORCRAFT MANUFACTURERS—Continued

No.	Name	Employment
	Part 29	
1	Erickson Air-Crane	600

Based on the historic number of new rotorcraft certificates over the next ten years, we expect that only one of the part 27 smaller firms will be affected by this final rule.

Although most of the proposed requirements intended to revise the flight certification requirements are current industry standards and support new FAA rotorcraft policy, some will increase costs, while some will decrease costs. Sections 27.49, 27.143, 29.143, 27.175, 29.175, 27.177, and 27.903 will increase costs by requiring manufacturers to add additional data and testing procedures to the RFM. Sections 27.173 and 29.173 on static longitudinal stability will be cost relieving to the manufacturers because they delete hover demonstrations that are redundant with other requirements.

As shown in Table VII–2, we estimate the total compliance costs for a small part 27 firm's new certification to be $77,000.

TABLE VII–2.—COMPLIANCE COSTS FOR SMALL BUSINESS PART 27 ROTORCRAFT MANUFACTURERS PER CERTIFICATION

Rule section	Cost
27.49	$20,075
27.143	29,300
27.173	(14,600)
27.175	3,650
27.177	20,075
27.903	18,250
Total	76,750

The annualized cost for this small operator is estimated at $10,928 ($76,750 × 0.142378 [5]).

As shown in Table VII–3, we estimate the total compliance costs for a small part 29 firm's new certification to be $175,000.

TABLE VII–3.—COMPLIANCE COSTS FOR SMALL BUSINESS PART 29 ROTORCRAFT MANUFACTURERS PER CERTIFICATION

Rule section	Cost
29.143	$280,000
29.173	(140,000)

TABLE VII–3.—COMPLIANCE COSTS FOR SMALL BUSINESS PART 29 ROTORCRAFT MANUFACTURERS PER CERTIFICATION—Continued

Rule section	Cost
29.175	35,000
Total	175,000

The annualized cost for this small operator is estimated at $24,916 ($175,000 × 0.142378 [6]).

The degree to which a small rotorcraft manufacturer can ''afford'' the cost of compliance is determined by the availability of financial resources. The initial implementation costs of the proposed rule may come from either cash flow or be borrowed. As a proxy for the firm's ability to afford the cost of compliance, we calculated the ratio of the total annualized cost of the proposed rule as a percentage of annual revenue. This ratio is a conservative measure as the annualized value of the 10-year total compliance cost is divided by one year of annual revenue. None of the small business operators potentially affected by this proposed rule will incur costs greater than 0.2 percent of their annual revenue (See Table VII–4).

TABLE VII–4.—IMPACT OF FINAL RULE ON SMALL U.S. ROTORCRAFT MANUFACTURERS

Name	Employment	Annual revenue	Cert. cost	Percentage
U.S. Part 27 Small Rotorcraft Manufacturers				
Hiller Aircraft Corp	35	$7,500,000	$10,928	0.15
Brantley Helicopter Industry	35	15,000,000	10,928	0.07
Enstrom Helicopter Corp	100	35,000,000	10,928	0.03
Robinson Helicopter Co., Inc	700	80,000,000	10,928	0.01
U.S. Part 29 Small Rotorcraft Manufacturers				
Erickson Air-Crane	600	35,000,000	24,916	0.07

As we expect only one of these companies to certificate a new rotorcraft in the next 10 years, only one will incur compliance costs. We estimated this compliance cost will be less that 0.2 percent of their total annual revenue.

Thus, we determined that no small entity will incur a substantial economic impact in the form of higher annual costs as a result of this rule.

Consequently, the FAA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small rotorcraft manufacturers.

[5] Uniform Annual Value discounted at 7% over 10-year period.

Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any

[6] Uniform Annual Value discounted at 7% over 10-year period.

activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not

Continued

The FAA has assessed the potential effect of this final rulemaking action and determined that it will reduce trade barriers by narrowing the differences between international and U.S. certification standards. Therefore, this final rule is in accord with the Trade Agreements Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that these international standards be the basis for U.S. standards.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You may obtain an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*; or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may also obtain a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

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 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 27

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 27 and 29 of title 14, Code of Federal Regulations as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 1. The authority citation for part 27 continues to read as follows:

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

■ 2. Amend § 27.25 by adding the word ''weight'' after the word ''maximum'' and removing the word ''or'' at the end of the sentence in paragraph (a)(1)(ii); removing the word ''and'' and adding the word ''or'' in its place in paragraph (a)(1)(iii); and by adding paragraph (a)(1)(iv) to read as follows:

§ 27.25 Weight limits.

(a) * * *

(1) * * *

(iv) The highest weight in which the provisions of §§ 27.79 or 27.143(c)(1), or combinations thereof, are demonstrated if the weights and operating conditions (altitude and temperature) prescribed by those requirements cannot be met; and

* * * * *

■ 3. Re-designate § 27.73 as new § 27.49 and revise to read as follows:

§ 27.49 Performance at minimum operating speed.

(a) For helicopters—

(1) The hovering ceiling must be determined over the ranges of weight, altitude, and temperature for which certification is requested, with—

(i) Takeoff power;

(ii) The landing gear extended; and

(iii) The helicopter in-ground effect at a height consistent with normal takeoff procedures; and

(2) The hovering ceiling determined under paragraph (a)(1) of this section must be at least—

(i) For reciprocating engine powered helicopters, 4,000 feet at maximum weight with a standard atmosphere;

(ii) For turbine engine powered helicopters, 2,500 feet pressure altitude at maximum weight at a temperature of standard plus 22 °C (standard plus 40 °F).

(3) The out-of-ground effect hovering performance must be determined over the ranges of weight, altitude, and temperature for which certification is requested, using takeoff power.

(b) For rotorcraft other than helicopters, the steady rate of climb at the minimum operating speed must be determined over the ranges of weight, altitude, and temperature for which certification is requested, with—

(1) Takeoff power; and

(2) The landing gear extended.

■ 4. Revise § 27.51 to read as follows:

§ 27.51 Takeoff.

The takeoff, with takeoff power and r.p.m. at the most critical center of gravity, and with weight from the maximum weight at sea level to the weight for which takeoff certification is requested for each altitude covered by this section—

(a) May not require exceptional piloting skill or exceptionally favorable conditions throughout the ranges of altitude from standard sea level conditions to the maximum altitude for which takeoff and landing certification is requested, and

(b) Must be made in such a manner that a landing can be made safely at any point along the flight path if an engine fails. This must be demonstrated up to the maximum altitude for which takeoff and landing certification is requested or 7,000 feet density altitude, whichever is less.

■ 5. Revise the section heading of § 27.71 to read as follows:

§ 27.71 Autorotation performance.

* * * * *

■ 6. Revise § 27.75(a) to read as follows:

§ 27.75 Landing.

(a) The rotorcraft must be able to be landed with no excessive vertical acceleration, no tendency to bounce, nose over, ground loop, porpoise, or water loop, and without exceptional piloting skill or exceptionally favorable conditions, with—

(1) Approach or autorotation speeds appropriate to the type of rotorcraft and selected by the applicant;

(2) The approach and landing made with—

(i) Power off, for single engine rotorcraft and entered from steady state autorotation; or

(ii) One-engine inoperative (OEI) for multiengine rotorcraft, with each operating engine within approved operating limitations, and entered from an established OEI approach.

* * * * *

■ 7. Re-designate § 27.79 as new § 27.87; revise the section heading; remove the word ''rotocraft'' and add in its place the word ''rotorcraft'' in paragraph (b)(3); and revise paragraphs (a)(1), (a)(2) and (b)(2) to read as follows:

§ 27.87 Height-speed envelope.

(a) * * *

(1) Altitude, from standard sea level conditions to the maximum altitude capability of the rotorcraft, or 7000 feet density altitude, whichever is less; and

(2) Weight, from the maximum weight at sea level to the weight selected by the applicant for each altitude covered by paragraph (a)(1) of this section. For helicopters, the weight at altitudes above sea level may not be less than the maximum weight or the highest weight allowing hovering out-of-ground effect, whichever is lower.

(b) * * *

(2) For multiengine helicopters, OEI (where engine isolation features ensure continued operation of the remaining engines), and the remaining engine(s) within approved limits and at the minimum installed specification power available for the most critical combination of approved ambient temperature and pressure altitude resulting in 7000 feet density altitude or the maximum altitude capability of the helicopter, whichever is less, and

* * * * *

■ 8. Amend § 27.143 by revising paragraph (a)(2)(v); re-designating paragraphs (d) and (e) as paragraphs (e) and (f) respectively; revising paragraphs (b)(4) and (c); and adding a new paragraph (d) to read as follows:

§ 27.143 Controllability and maneuverability.

(a) * * *

(2) * * *

(v) Autorotation;

* * * * *

(b) * * *

(4) Power off (except for helicopters demonstrating compliance with paragraph (f) of this section) and power on.

(c) Wind velocities from zero to at least 17 knots, from all azimuths, must be established in which the rotorcraft can be operated without loss of control on or near the ground in any maneuver appropriate to the type (such as crosswind takeoffs, sideward flight, and rearward flight)—

(1) With altitude, from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft or 7000 feet density altitude, whichever is less; with—

(i) Critical Weight;

(ii) Critical center of gravity;

(iii) Critical rotor r.p.m.;

(2) For takeoff and landing altitudes above 7000 feet density altitude with–

(i) Weight selected by the applicant;

(ii) Critical center of gravity; and

(iii) Critical rotor r.p.m.

(d) Wind velocities from zero to at least 17 knots, from all azimuths, must be established in which the rotorcraft can be operated without loss of control out-of-ground-effect, with—

(1) Weight selected by the applicant;

(2) Critical center of gravity;

(3) Rotor r.p.m. selected by the applicant; and

(4) Altitude, from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft.

* * * * *

■ 9. Amend § 27.173 by removing the words ''a speed'' in the two places in paragraph (a) and adding the words ''an airspeed'' in both their places; removing paragraph (c); and revising paragraph (b) to read as follows:

§ 27.173 Static longitudinal stability.

* * * * *

(b) Throughout the full range of altitude for which certification is requested, with the throttle and collective pitch held constant during the maneuvers specified in § 27.175(a) through (d), the slope of the control position versus airspeed curve must be positive. However, in limited flight conditions or modes of operation determined by the Administrator to be acceptable, the slope of the control position versus airspeed curve may be neutral or negative if the rotorcraft possesses flight characteristics that allow the pilot to maintain airspeed within ±5 knots of the desired trim airspeed without exceptional piloting skill or alertness.

■ 10. Amend § 27.175 by removing paragraph (d); revising the introductory text paragraphs (a) and (b); revising paragraphs (b)(3) and (b)(5); re-designating paragraph (c) as (d) and

revising re-designated paragraph (d); and adding a new paragraph (c) to read as follows:

§ 27.175 Demonstration of static longitudinal stability.

(a) *Climb.* Static longitudinal stability must be shown in the climb condition at speeds from Vy − 10 kt to Vy + 10 kt with—

* * * * *

(b) *Cruise.* Static longitudinal stability must be shown in the cruise condition at speeds from 0.8 V_{NE} − 10 kt to 0.8 V_{NE} + 10 kt or, if V_H is less than 0.8 V_{NE}, from V_H − 10 kt to V_H + 10 kt, with—

* * * * *

(3) Power for level flight at 0.8 V_{NE} or V_H, whichever is less;

* * * * *

(5) The rotorcraft trimmed at 0.8 V_{NE} or V_H, whichever is less.

(c) V_{NE}. Static longitudinal stability must be shown at speeds from V_{NE} − 20 kt to V_{NE} with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required for level flight at V_{NE} − 10 kt or maximum continuous power, whichever is less;

(4) The landing gear retracted; and

(5) The rotorcraft trimmed at V_{NE} − 10 kt.

(d) *Autorotation.* Static longitudinal stability must be shown in autorotation at—

(1) Airspeeds from the minimum rate of descent airspeed − 10 kt to the minimum rate of descent airspeed + 10 kt, with—

(i) Critical weight;

(ii) Critical center of gravity;

(iii) The landing gear extended; and

(iv) The rotorcraft trimmed at the minimum rate of descent airspeed.

(2) Airspeeds from best angle-of-glide airspeed − 10 kt to the best angle-of-glide airspeed + 10 kt, with—

(i) Critical weight;

(ii) Critical center of gravity;

(iii) The landing gear retracted; and

(iv) The rotorcraft trimmed at the best angle-of-glide airspeed.

* * * * *

■ 11. Revise § 27.177 to read as follows:

§ 27.177 Static directional stability.

(a) The directional controls must operate in such a manner that the sense and direction of motion of the rotorcraft following control displacement are in the direction of the pedal motion with the throttle and collective controls held constant at the trim conditions specified in § 27.175(a), (b), and (c). Sideslip angles must increase with steadily increasing directional control deflection for sideslip angles up to the lesser of—

(1) ±25 degrees from trim at a speed of 15 knots less than the speed for minimum rate of descent varying linearly to ±10 degrees from trim at V_{NE};

(2) The steady state sideslip angles established by § 27.351;

(3) A sideslip angle selected by the applicant, which corresponds to a sideforce of at least 0.1g; or

(4) The sideslip angle attained by maximum directional control input.

(b) Sufficient cues must accompany the sideslip to alert the pilot when the aircraft is approaching the sideslip limits.

(c) During the maneuver specified in paragraph (a) of this section, the sideslip angle versus directional control position curve may have a negative slope within a small range of angles around trim, provided the desired heading can be maintained without exceptional piloting skill or alertness.

■ 12. Amend § 27.903 by adding a new paragraph (d) to read as follows:

§ 27.903 Engines.

* * * * *

(d) *Restart capability:* A means to restart any engine in flight must be provided.

(1) Except for the in-flight shutdown of all engines, engine restart capability must be demonstrated throughout a flight envelope for the rotorcraft.

(2) Following the in-flight shutdown of all engines, in-flight engine restart capability must be provided.

■ 13. Amend § 27.1587 by removing paragraphs (b)(1)(i) and (b)(1)(ii), and revising the introductory text of paragraph (a) and paragraphs (a)(2)(i) and (a)(2)(ii) to read as follows:

§ 27.1587 Performance information.

(a) The Rotorcraft Flight Manual must contain the following information, determined in accordance with §§ 27.49 through 27.79 and 27.143(c) and (d):

* * * * *

(2) * * *

(i) The steady rates of climb and descent, in-ground effect and out-of-ground effect hovering ceilings, together with the corresponding airspeeds and other pertinent information including the calculated effects of altitude and temperatures;

(ii) The maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover in-ground effect and out-of-ground effect in winds of not less than 17 knots from all azimuths. These data must be clearly referenced to the appropriate hover charts. In addition, if there are other combinations of weight, altitude and temperature for which performance information is provided and at which the rotorcraft cannot land and take off safely with the maximum wind value, those portions of the operating envelope and the appropriate safe wind conditions must be stated in the Rotorcraft Flight Manual;

* * * * *

■ 14. Amend Appendix B to part 27 by revising paragraphs V(a) and VII(a) to read as follows:

Appendix B to Part 27—Airworthiness Criteria for Helicopter Instrument Flight

* * * * *

V. Static Lateral Directional Stability

(a) Static directional stability must be positive throughout the approved ranges of airspeed, power, and vertical speed. In straight and steady sideslips up to ±10° from trim, directional control position must increase without discontinuity with the angle of sideslip, except for a small range of sideslip angles around trim. At greater angles up to the maximum sideslip angle appropriate to the type, increased directional control position must produce an increased angle of sideslip. It must be possible to maintain balanced flight without exceptional pilot skill or alertness.

* * * * *

VII. Stability Augmentation System (SAS)

(a) If a SAS is used, the reliability of the SAS must be related to the effects of its failure. Any SAS failure condition that would prevent continued safe flight and landing must be extremely improbable. It must be shown that, for any failure condition of the SAS that is not shown to be extremely improbable—

(1) The helicopter is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved IFR operating limitations; and

(2) The overall flight characteristics of the helicopter allow for prolonged instrument flight without undue pilot effort. Additional unrelated probable failures affecting the control system must be considered. In addition—

(i) The controllability and maneuverability requirements in Subpart B of this part must be met throughout a practical flight envelope;

(ii) The flight control, trim, and dynamic stability characteristics must not be impaired below a level needed to allow continued safe flight and landing; and

(iii) The static longitudinal and static directional stability requirements of Subpart B must be met throughout a practical flight envelope.

* * * * *

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 15. The authority citation for part 29 continues to read as follows:

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

■ 16. Amend § 29.25 by adding paragraph (a)(4) to read as follows:

§ 29.25 Weight limits.

(a) * * *

(4) For Category B rotorcraft with 9 or less passenger seats, the maximum weight, altitude, and temperature at which the rotorcraft can safely operate near the ground with the maximum wind velocity determined under § 29.143(c) and may include other demonstrated wind velocities and azimuths. The operating envelopes must be stated in the Limitations section of the Rotorcraft Flight Manual.

* * * * *

■ 17. Amend § 29.143 by revising paragraph (a)(2)(v); re-designating paragraphs (d) and (e) as paragraphs (e) and (f) respectively; revising paragraphs (b)(4) and (c); and adding a new paragraph (d) to read as follows:

§ 29.143 Controllability and maneuverability.

(a) * * *

(2) * * *

(v) Autorotation; and

* * * * *

(b) * * *

(4) Power off (except for helicopters demonstrating compliance with paragraph (f) of this section) and power on.

(c) Wind velocities from zero to at least 17 knots, from all azimuths, must be established in which the rotorcraft can be operated without loss of control on or near the ground in any maneuver appropriate to the type (such as crosswind takeoffs, sideward flight, and rearward flight), with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Critical rotor r.p.m.; and

(4) Altitude, from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft.

(d) Wind velocities from zero to at least 17 knots, from all azimuths, must be established in which the rotorcraft can be operated without loss of control out-of-ground effect, with—

(1) Weight selected by the applicant;

(2) Critical center of gravity;

(3) Rotor r.p.m. selected by the applicant; and

(4) Altitude, from standard sea level conditions to the maximum takeoff and landing altitude capability of the rotorcraft.

* * * * *

■ 18. Amend § 29.173 by removing the words ''a speed'' in the two places it appears in paragraph (a) and adding the words ''an airspeed'' in their places; removing paragraph (c); and revising paragraph (b) to read as follows:

§ 29.173 Static longitudinal stability.

* * * * *

(b) Throughout the full range of altitude for which certification is requested, with the throttle and collective pitch held constant during the maneuvers specified in § 29.175(a) through (d), the slope of the control position versus airspeed curve must be positive. However, in limited flight conditions or modes of operation determined by the Administrator to be acceptable, the slope of the control position versus airspeed curve may be neutral or negative if the rotorcraft possesses flight characteristics that allow the pilot to maintain airspeed within ±5 knots of the desired trim airspeed without exceptional piloting skill or alertness.

■ 19. Revise § 29.175 to read as follows:

§ 29.175 Demonstration of static longitudinal stability.

(a) *Climb.* Static longitudinal stability must be shown in the climb condition at speeds from Vy − 10 kt to Vy + 10 kt with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Maximum continuous power;

(4) The landing gear retracted; and

(5) The rotorcraft trimmed at Vy.

(b) *Cruise.* Static longitudinal stability must be shown in the cruise condition at speeds from 0.8 V_{NE} − 10 kt to 0.8 V_{NE} + 10 kt or, if V_H is less than 0.8 V_{NE}, from VH − 10 kt to V_H + 10 kt, with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power for level flight at 0.8 V_{NE} or V_H, whichever is less;

(4) The landing gear retracted; and

(5) The rotorcraft trimmed at 0.8 V_{NE} or V_H, whichever is less.

(c) *V_{NE}.* Static longitudinal stability must be shown at speeds from V_{NE} − 20 kt to V_{NE} with—

(1) Critical weight;

(2) Critical center of gravity;

(3) Power required for level flight at V_{NE} − 10 kt or maximum continuous power, whichever is less;

(4) The landing gear retracted; and

(5) The rotorcraft trimmed at V_{NE} − 10 kt.

(d) *Autorotation.* Static longitudinal stability must be shown in autorotation at—

(1) Airspeeds from the minimum rate of descent airspeed − 10 kt to the minimum rate of descent airspeed + 10 kt, with—

(i) Critical weight;

(ii) Critical center of gravity;

(iii) The landing gear extended; and

(iv) The rotorcraft trimmed at the minimum rate of descent airspeed.

(2) Airspeeds from the best angle-of-glide airspeed − 10kt to the best angle-of-glide airspeed + 10kt, with—

(i) Critical weight;

(ii) Critical center of gravity;

(iii) The landing gear retracted; and

(iv) The rotorcraft trimmed at the best angle-of-glide airspeed.

■ 20. Revise § 29.177 to read as follows:

§ 29.177 Static directional stability.

(a) The directional controls must operate in such a manner that the sense and direction of motion of the rotorcraft following control displacement are in the direction of the pedal motion with throttle and collective controls held constant at the trim conditions specified in § 29.175(a), (b), (c), and (d). Sideslip angles must increase with steadily increasing directional control deflection for sideslip angles up to the lesser of—

(1) ±25 degrees from trim at a speed of 15 knots less than the speed for minimum rate of descent varying linearly to ±10 degrees from trim at V_{NE};

(2) The steady-state sideslip angles established by § 29.351;

(3) A sideslip angle selected by the applicant, which corresponds to a sideforce of at least 0.1g; or

(4) The sideslip angle attained by maximum directional control input.

(b) Sufficient cues must accompany the sideslip to alert the pilot when approaching sideslip limits.

(c) During the maneuver specified in paragraph (a) of this section, the sideslip angle versus directional control position curve may have a negative slope within a small range of angles around trim, provided the desired heading can be maintained without exceptional piloting skill or alertness.

■ 21. Amend § 29.1587 by revising paragraph (a)(7), (b)(2), and (b)(8) to read as follows:

§ 29.1587 Performance information.

* * * * *

(a) * * *

(7) Out-of-ground effect hover performance determined under § 29.49 and the maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover out-of-ground effect in winds of not less than 17 knots from all azimuths. These data must be clearly referenced to the appropriate hover charts.

(b) * * *

(2) The steady rates of climb and in-ground-effect hovering ceiling, together with the corresponding airspeeds and other pertinent information, including

the calculated effects of altitude and temperature;

* * * * *

(8) Out-of-ground effect hover performance determined under § 29.49 and the maximum safe wind demonstrated under the ambient conditions for data presented. In addition, the maximum weight for each altitude and temperature condition at which the rotorcraft can safely hover out-of-ground-effect in winds of not less than 17 knots from all azimuths. These data must be clearly referenced to the appropriate hover charts; and

* * * * *

■ 22. Amend Appendix B to Part 29 in paragraph V(b) by removing the word ''cycle'' and adding the word ''cyclic'' in its place; and by revising paragraphs V(a) and VII(a) to read as follows:

Appendix B to Part 29—Airworthiness Criteria for Helicopter Instrument Flight

* * * * *

V. Static Lateral Directional Stability

(a) Static directional stability must be positive throughout the approved ranges of airspeed, power, and vertical speed. In straight and steady sideslips up to ±10° from trim, directional control position must increase without discontinuity with the angle of sideslip, except for a small range of sideslip angles around trim. At greater angles up to the maximum sideslip angle appropriate to the type, increased directional control position must produce an increased angle of sideslip. It must be possible to maintain balanced flight without exceptional pilot skill or alertness.

* * * * *

VII. Stability Augmentation System (SAS)

(a) If a SAS is used, the reliability of the SAS must be related to the effects of its failure. Any SAS failure condition that would prevent continued safe flight and landing must be extremely improbable. It must be shown that, for any failure condition of the SAS that is not shown to be extremely improbable—

(1) The helicopter is safely controllable when the failure or malfunction occurs at any speed or altitude within the approved IFR operating limitations; and

(2) The overall flight characteristics of the helicopter allow for prolonged instrument flight without undue pilot effort. Additional unrelated probable failures affecting the control system must be considered. In addition—

(i) The controllability and maneuverability requirements in Subpart B must be met throughout a practical flight envelope;

(ii) The flight control, trim, and dynamic stability characteristics must not be impaired below a level needed to allow continued safe flight and landing;

(iii) For Category A helicopters, the dynamic stability requirements of Subpart B must also be met throughout a practical flight envelope; and

(iv) The static longitudinal and static directional stability requirements of Subpart B must be met throughout a practical flight envelope.

* * * * *

Issued in Washington, DC, on February 20, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8–3817 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0104; Airspace Docket No. 07–AEA–10]

Establishment of Class E Airspace; Oil City, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule that establishes a Class E airspace area to support Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedures (IAPs) that serve the Northwest Medical Center in Oil City, PA.

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

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJO2–E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 19, 2007 (72 FR 71762). The FAA uses the direct final rulemaking procedure for a non controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 14, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA, on February 12, 2008.

John D. Haley,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–875 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–0165; Airspace Docket No. 07–AEA–11]

Establishment of Class E Airspace; Montrose, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule that establishes a Class E airspace area to support Area Navigation (RNAV) Global Positioning System (GPS) special Instrument Approach Procedures (IAPs) that serve the Montrose High School Heliport, Montrose, PA.

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

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJO2–E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 13, 2007 (72 FR 70768). The FAA uses the direct final rulemaking procedure for a non controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such

an adverse comment, were received within the comment period, the regulation would become effective on February 14, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA, on February 7, 2008.

John D. Haley,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–876 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 33

[Docket No. RM07–21–000; Order No. 708]

Blanket Authorization Under FPA Section 203

Issued February 21, 2008.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations pursuant to section 203 of the Federal Power Act (FPA) to provide for additional blanket authorizations under FPA section 203(a)(1). These blanket authorizations will facilitate investment in the electric utility industry and, at the same time, ensure that public utility customers are adequately protected from any adverse effects of such transactions.

DATES: *Effective Date:* This Final Rule will become effective March 31, 2008.

FOR FURTHER INFORMATION CONTACT:

Carla Urquhart (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8496

Roshini Thayaparan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6857

David Hunger (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8148

Andrew P. Mosier, Jr. (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6274

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff

1. On July 20, 2007, the Commission issued a Notice of Proposed Rulemaking [1] to provide for an additional blanket authorization under section 203(a)(1) of the Federal Power Act (FPA).[2] After receiving comments in response to the Blanket Authorization NOPR, the Commission amends Part 33 of the Commission's regulations to add five blanket authorizations under section 203(a)(1). In addition, this Final Rule provides certain clarifications regarding the existing blanket authorizations under section 203. Further, this Final Rule clarifies the definitions of the terms ''affiliate'' and ''captive customers.'' These blanket authorizations and clarifications will facilitate investment in the electric utility industry and, at the same time, ensure that public utility customers are adequately protected from any adverse effects of such transactions.

I. Background

2. The Energy Policy Act of 2005 [3] expanded the scope of the corporate transactions subject to the Commission's review under section 203 of the FPA. Among other things, amended section 203: (1) Expands the Commission's review authority to include authority over certain holding company mergers and acquisitions, as well as certain public utility acquisitions of generating facilities; (2) requires that, prior to approving a disposition under section 203, the Commission must determine that the transaction would not result in inappropriate cross-subsidization of non-utility affiliates or the pledge or encumbrance of utility assets; [4] and (3) imposes statutory deadlines for acting on mergers and other jurisdictional transactions.

3. Through the Order No. 669 rulemaking proceeding, the Commission promulgated regulations adopting certain modifications to 18 CFR 2.26 and Part 33 to implement amended section 203.[5] The Commission also provided blanket authorizations for certain transactions subject to section 203. These blanket authorizations were crafted to ensure that there is no harm to captive customers of franchised public utilities, but sought to accommodate investments in the electric utility industry and market liquidity. Some commenters in the rulemaking proceeding argued that the Commission should have granted additional blanket authorizations that would benefit the marketplace and not harm customers. Other commenters argued that the Commission should adopt additional generic rules to guard against inappropriate cross-subsidization associated with the mergers. Yet other commenters argued that the Commission should modify its competitive analysis for mergers, which has been in place for 10 years. The Commission stated that it would reevaluate these and other issues at a technical conference on the Commission's section 203 regulations as well as certain issues raised in the Order No. 667 rulemaking proceeding implementing the Public Utility Holding Company Act of 2005 (PUHCA 2005).[6]

4. On December 7, 2006, the Commission held a technical conference (December 7 Technical Conference) to discuss several of the issues that arose in the Order No. 667 and Order No. 669 rulemaking proceedings. The December 7 Technical Conference discussed a range of topics. The first panel discussed whether there are additional actions, under the FPA or the NGA, that the Commission should take to supplement the protections against cross-subsidization that were implemented in the Order No. 667 and Order No. 669 rulemaking proceedings. The second panel discussed whether,

[1] *Blanket Authorization Under FPA Section 203,* Notice of Proposed Rulemaking, 72 FR 41640 (July 31, 2007), FERC Stats. & Regs. ¶ 32,619 (2007) (Blanket Authorization NOPR).

[2] 16 U.S.C. 824b.

[3] Energy Policy Act of 2005, Pub. L. 109–58, 1289, 119 Stat. 594, 982–83 (2005) (EPAct 2005).

[4] Section 203(a)(4) is not an absolute prohibition on the cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company. If the Commission determines that the cross-subsidization, pledge or encumbrance will be consistent with the public interest, the action may be permitted.

[5] *Transactions Subject to FPA Section 203,* Order No. 669, 71 FR 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g,* Order No. 669–A, 71 FR 28422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214 (2006), *order on reh'g,* Order No. 669–B, 71 FR 42579 (July 27, 2006), FERC Stats. & Regs. ¶ 31,225 (2006).

[6] EPAct 2005, Pub. L. 109–58, 1261, *et seq.*, 119 Stat. 594, 972–78 (2005) (PUHCA 2005). *See also Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g,* Order No. 667–A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213, *order on reh'g,* Order No. 667–B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g,* Order No. 667–C, 72 FR 8277 (Feb. 26, 2007), 118 FERC ¶ 61,133 (2007). These issues included matters related to inappropriate cross-subsidization and pledges or encumbrance of utility assets, whether our current merger policy should be revised, and whether additional exemptions, different reporting requirements, or other regulatory action (under PUHCA 2005 or the FPA or Natural Gas Act (NGA)) needed to be considered.

and if so how, the Commission should modify its Cash Management Rule [7] in light of PUHCA 2005 and whether the Commission should codify specific safeguards that must be adopted for cash management programs and money pool agreements and transactions. The third panel discussed whether modifications to the specific exemptions, waivers and blanket authorizations set forth in the Order No. 667 and Order No. 669 rulemaking proceedings are warranted. Post-technical conference comments were accepted.

5. On March 8, 2007, the Commission held a second technical conference (March 8 Technical Conference) to discuss whether the Commission's section 203 policy should be revised and, in particular, whether the Commission's Appendix A merger analysis is sufficient to identify market power concerns in today's electric industry market environment. The first panel discussed whether the Appendix A analysis is appropriate to analyze a merger's effect on competition, given the changes that have occurred in the industry (e.g., the development of Regional Transmission Organizations) and statutory changes (e.g., as a result of the repeal of the Public Utility Holding Company Act of 1935 [8] and new authorities given to the Commission in EPAct 2005 [9]). The second panel assessed the factors the Commission uses in reviewing mergers and the coordination between the Commission and other agencies (including state commissions) with merger review responsibility.

6. On July 20, 2007, the Commission took three actions based on the Commission's experience implementing amended FPA section 203 and PUHCA 2005, as well as the record from the Commission's December 7 and March 8 Technical Conferences regarding section 203 and PUCHA 2005. In this docket, the Commission issued the Blanket Authorization NOPR, proposing an additional blanket authorization for certain dispositions of jurisdictional facilities under FPA section 203(a)(1) and seeking comment on additional blanket authorizations under section 203. In addition, in separate proceedings, the Commission issued a policy statement providing additional guidance regarding the Commission's section 203 authority [10] and a notice of proposed rulemaking proposing to codify restrictions on affiliate transactions between franchised public utilities with captive customers and their market-regulated power sales affiliates or non-utility affiliates.[11]

II. Blanket Authorization NOPR

7. In the Blanket Authorization NOPR, based on the record from the technical conferences (including both oral and written comments) and the Commission's experience under amended section 203 to date, the Commission proposed to provide for a limited blanket authorization to public utilities under section 203(a)(1). Under this limited blanket authorization, a public utility would be pre-authorized to dispose of less than 10 percent of its voting securities to a public utility holding company but only if, after the disposition, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of that public utility. The proposed limited blanket authorization would work in conjunction with the blanket authorization granted to holding companies under section 203(a)(2) in 18 CFR 33.1(c)(2)(ii).[12] The Commission noted that this proposed blanket authorization would not entirely parallel the section 203(a)(2) authorization since the section 203(a)(2) authorization does not contain the ''in aggregate'' limitation. However, the Commission stated that this limitation would provide better protection against possible transfer of control of a public utility. The Commission sought comment on this limitation.

8. The Commission stated that the disposition of such limited voting interests (less than 10 percent), with the proposed ''in aggregate'' restriction and the existing reporting requirements applicable to holding companies,[13] will not harm competition or captive customers. Moreover, the Commission stated this 10 percent threshold is consistent with the definition of ''holding company'' under section 1262(8)(A) of PUHCA 2005. Under that definition, any company that has the power to vote 10 percent or more of the securities of a public utility company (or a holding company of a public utility company) triggers holding company status and thus is presumed to raise sufficient concerns about controlling influence over a subsidiary public utility that regulatory oversight is needed. The Commission also found the 10 percent threshold to be consistent with the blanket authorization granted under section 203(a)(2) in the Order No. 669 rulemaking proceeding, under which holding companies are pre-authorized to acquire up to 9.99 percent of voting securities of a public utility.

9. The Commission further noted that, as part of the existing ''parallel'' blanket authorization under section 203(a)(2), the Commission already requires the holding company to provide to the Commission copies of any Schedule 13D, Schedule 13G and Form 13F at the same time and on the same basis, as filed with the SEC in connection with any securities purchased, acquired or taken pursuant to the blanket authorization under section 203(a)(2) provided in § 33.1(c)(2) of the Commission's regulations.[14] Any person is required to file a Schedule 13 notification with the SEC of an acquisition of beneficial ownership of more than five percent of a class of equity securities.[15] Importantly, a Schedule 13G filer must acquire the subject securities ''in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer,

[7] *Regulation of Cash Management Practices,* Order No. 634, 68 FR 40500 (July 8, 2003), FERC Stats. & Regs. ¶ 31,145, *revised,* Order No. 634–A, 68 FR 61993 (Oct. 31, 2003), FERC Stats. & Regs. ¶ 31,152 (2003) (Cash Management Rule).

[8] 16 U.S.C. 79a *et seq.* (PUHCA 1935). EPAct 2005 repealed PUHCA 1935. EPAct 2005, Pub L. No. 109–58, 1263.

[9] These include new authorities through amended FPA section 203 as well as PUHCA 2005.

[10] *FPA Section 203 Supplemental Policy Statement,* 72 FR 42277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration,* 122 FERC ¶ 61,157 (2008).

[11] *Cross-Subsidization Restrictions on Affiliate Transactions,* 72 FR 41644 (July 31, 2007), FERC Stats. & Regs. ¶ 32,618 (2007) (Affiliate Transactions NOPR); *see Cross-Subsidization Restrictions on Affiliate Transactions,* Order No. 707 122 FERC ¶ 61,155 (2008) (Affiliate Transactions Final Rule).

[12] The section 203(a)(2) blanket authorization states that any holding company in a holding company system that includes a transmitting utility or an electric utility may purchase, acquire, or take ''[a]ny voting security in a transmitting utility, an electric utility company, or a holding company in a holding company system that includes a transmitting utility or an electric utility company if, after the acquisition, the holding company will own less than 10 percent of the outstanding voting securities.'' 18 CFR 33.1(c)(2)(ii). Because a ''transmitting utility'' or ''electric utility company'' may also be a ''public utility'' as defined in the FPA, the public utility may need to obtain separate authorization for the same transaction under FPA section 203(a)(1), which requires authorization for public utilities to dispose of jurisdictional facilities.

[13] *See, e.g.,* 18 CFR 33.1(c)(4) (requiring the filing of Securities and Exchange Commission (SEC) Schedule 13D, Schedule 13G, and Form 13F, if applicable); 18 CFR 35.42(a) (effective September 18, 2007, the effective date of *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities,* Order No. 697, 72 FR 39903 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007)) (requiring a notification of any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority); 18 CFR 366.4(a) (requiring Form FERC–65 (notification of holding company status)).

[14] 18 CFR 33.1(c)(4).

[15] 17 CFR 240.13d–1(a).

nor in connection with or as a participant in any transaction having such purpose or effect'' over entities whose securities it holds.[16] Because the Commission already receives these filings from the holding company, the Commission proposed not to require additional reporting on the part of individual public utilities to duplicate the reporting of information we are already getting about the same transaction. However, the Commission sought comment on whether any additional reporting by the public utility should be required.

10. The Commission also sought comment on whether blanket authorizations under section 203(a)(1) should be provided for the transfer of securities by a public utility to a holding company granted a blanket authorization under section 203(a)(2) in 18 CFR 33.1(c)(8),[17] 33.1(c)(9),[18] and 33.1(c)(10).[19] In addition, the Commission sought comment on whether it should grant a generic blanket authorization under section 203(a)(1) for the acquisition or disposition of a jurisdictional contract where neither the acquirer nor transferor has captive customers and the contract does not convey control over the operation of a generation or transmission facility.

III. Procedural Matters

11. The Blanket Authorization NOPR invited comments on the proposed regulations. Comments on the Blanket Authorization NOPR were filed by: American Public Power Association and National Rural Electric Cooperative Association (APPA/NRECA); Edison Electric Institute (EEI); Electric Power Supply Association (EPSA); Entergy Services, Inc. (Entergy); Financial Institutions Energy Group (the Financial Group); Mirant Corporation (Mirant); Modesto Irrigation District (Modesto); and Oklahoma Corporation Commission (Oklahoma Commission).

IV. Discussion

12. This Final Rule adopts the proposal in the Blanket Authorization NOPR to pre-authorize a public utility to dispose of less than 10 percent of its voting securities to a public utility holding company if, after the disposition, the holding company and any associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of that public utility. Based on comments to the Blanket Authorization NOPR, this Final Rule also provides four additional blanket authorizations under section 203(a)(1). First, a public utility is granted a blanket authorization under section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization in § 33.1(c)(8) if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility. Second, a public utility is granted a blanket authorization under section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization in § 33.1(c)(9). Third, a public utility is granted a blanket authorization under section 203(a)(1) to transfer its outstanding voting securities to any holding company granted blanket authorization in § 33.1(c)(10). Fourth, a public utility is granted a blanket authorization under section 203(a)(1) for the acquisition or disposition of a jurisdictional contract where neither the acquirer nor transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, the contract does not convey control over the operation of a generation or transmission facility, the parties to the transaction are neither affiliates nor associate companies, and the acquirer is a public utility. In addition, this Final Rule provides certain clarifications regarding the existing blanket authorizations under section 203. Finally, this Final Rule clarifies the definitions of the terms ''affiliate'' and ''captive customers.''

A. Proposed Blanket Authorizations

1. Scope of the Proposed Blanket Authorization

a. Comments

13. APPA/NRECA, Mirant and the Oklahoma Commission support the limited blanket authorization as proposed by the Commission. The Oklahoma Commission states that the rule would allow utilities to expedite business ventures, but warns that the Commission should use terms in their plain and ordinary meanings to reduce any potential ambiguity. It also recommends that the Commission consider language that would allow state commissions to continue to receive notices of any investigations of regulated public utility companies.

14. In the Blanket Authorization NOPR, the Commission asked for comments on the ''in aggregate'' limitation. APPA/NRECA support the proposed aggregate ownership limitation, stating that it is needed to help prevent the transfer of control of public utilities. They argue that omitting the ''in aggregate'' limitation would allow a public utility to sell less than 10 percent of its voting securities in successive transfers to each of several affiliates or associate companies (or even the same entity). APPA/NRECA further argues that omitting the ''in aggregate'' limitation is not in the public interest because, absent a case-by-case review, the Commission has no basis for a finding that an indirect transfer of control of a public utility's generation or transmission facilities to a single entity or to several affiliated entities will not harm competition, captive customers, or transmission customers.

15. Mirant also supports the limited blanket authorization with the ''in aggregate'' limitation. It states that while this does not completely parallel the blanket authorization granted in Order No. 669, it is comparable enough to remedy the problem that exists when one party must seek Commission review of the transaction.

16. EEI and the Financial Group support the blanket authorization with certain clarifications and recommendations. Specifically, the Financial Group argues that the proposed less than 10 percent blanket authorization under section 203(a)(1) should be expanded to include all acquirers, not just holding companies. It asserts that if a disposition of less than 10 percent of a public utility's voting securities to a holding company raises no concerns with respect to control, markets, or captive customers, then a disposition of less than 10 percent of a public utility's voting securities to an entity that is not a holding company should also raise no concerns. The Financial Group states that, in the case of a disposition of less than 10 percent of the voting securities of a public utility, the interest being disposed of does not convey control and cannot harm markets or captive customers, so the status of the acquirer—as a holding company, public utility, or an entity

[16] 17 CFR 240.13d–1(b)(1)(i).

[17] 18 CFR 33.1(c)(8) (granting a blanket authorization under section 203(a)(2) to a person that is a holding company solely with respect to one or more exempt wholesale generators (EWGs), foreign utility companies (FUCOs), or qualifying facilities (QFs) to acquire the securities of additional EWGs, FUCOs, or QFs).

[18] 18 CFR 33.1(c)(9) (granting a conditional blanket authorization under section 203(a)(2) to a holding company, or a subsidiary of that company, that is regulated by the Board of Governors of the Federal Reserve Bank or by the Office of the Comptroller of the Currency, under the Bank Holding Company Act of 1956 as amended by the Gramm-Leach-Bliley Act of 1999).

[19] 18 CFR 33.1(c)(10) (granting a limited blanket authorization under section 203(a)(2) to a holding company, or a subsidiary of that company, for the acquisition of securities of a public utility or a holding company that includes a public utility for purposes of underwriting activities or hedging transactions).

that is neither—should be irrelevant. It argues that requiring a public utility to seek approval under section 203(a)(1) when disposing of less than 10 percent of its voting securities to a non-holding company would not serve any regulatory purpose, and adds needless costs and delays to transactions that do not raise section 203 concerns.

17. Similarly, EEI argues that the Commission should not limit its proposed section 203(a)(1) blanket authorization to the entities described in 18 CFR 33.1(c)(2)(ii). EEI states that § 33.1(c)(2)(ii) only covers acquisitions by holding companies of securities of a transmitting utility, electric utility company, or holding company in a holding company system with such utilities. This, EEI argues, excludes a broader class of public utilities as well as non-holding company acquirers. It contends that the Commission would reduce the regulatory burden and encourage investment without causing harm ''by extending the new blanket authorization to cover jurisdictional transfers of securities from the broader class of 'public utilities' to 'any person' without the constraints contained in [§] 33.1(c)(2)(ii).'' [20]

18. As an additional matter, the Financial Group recommends that the Commission clarify that the aggregate limitation only applies to companies in a holding company system that are 10 percent or more owned by the holding company or its subsidiaries. It argues that this should be clarified by eliminating the reference to ''affiliate'' altogether in the proposed definition. In the alternative, the Financial Group argues that the Commission clarify that the term does not refer to the PUHCA 2005 definition of affiliate, but rather to an entity that controls, is controlled by, or is under common control with, another entity (where control is rebuttably presumed to mean a voting interest of 10 percent or more).

b. Commission Determination

19. We will adopt the proposed blanket authorization without modification. We will retain the ''in aggregate'' limitation so that, after a disposition of a public utility's securities under the proposed blanket authorization, the acquiring holding company and any associate or affiliate companies ''in aggregate'' would own less than 10 percent of the outstanding voting interests of that the public utility. As commenters point out, the limitation helps to prevent a public utility from transferring less than 10 percent of its voting securities in successive transfers to each of several affiliate or associate companies (or even the same entity), and thereby transferring control.

20. We deny the Financial Group's and EEI's requests to expand the blanket authorization to cover not only public utility dispositions of securities to holding companies but also public utility dispositions of securities to ''any persons.'' This request would expand the blanket authorization proposed in the existing NOPR beyond its original intent, which was to ensure that transactions qualifying under the section 203(a)(2) blanket authorization would not have to seek approval under section 203(a)(1).[21] In addition, limiting the blanket authorization to holding companies allows the Commission to monitor these dispositions for possible changes of control even when they fall under the 10 percent threshold because of holding companies' preexisting reporting requirements.[22] If we were to expand the blanket authorization to ''any person,'' we would need to establish appropriate reporting requirements so that we could monitor transfers to non-holding companies. This is important because, as we explained in the Supplemental Policy Statement, although there is a presumption that less than 10 percent of a utility's shares will not result in a change of control, this presumption is rebuttable. In some instances, the transfer of less than 10 percent of voting shares may constitute a transfer of control.[23] Accordingly, at this time we decline to expand the proposed generic blanket authorization as requested EEI and the Financial Group. However, we recognize that it could reduce regulatory burdens and encourage investment to allow transfers of securities not only to holding companies but to other ''persons'' and that such transfers will not harm competition or customers as long as there is sufficient ability to monitor possible changes in control of public utilities. Therefore, the Commission is willing to consider such blanket authorizations on a case-by-case basis if applicants can propose sufficient reporting requirements to allow adequate monitoring of possible changes in control and assure us that captive customers are adequately protected.

21. We will also deny the Financial Group's suggestion to eliminate the term ''affiliate'' from the proposed blanket authorization. However, we clarify that the term affiliate for purposes of the blanket authorization does not refer to the PUHCA 2005 definition of affiliate, but rather, to the definition we adopt in the Affiliate Transactions Final Rule issued concurrently with this Final Rule. As discussed in the Affiliate Transactions Final Rule, we find it appropriate to explicitly incorporate the PUHCA 1935 definition of affiliate for EWGs.[24] We also adopt the PUHCA 1935 definition of affiliate for non-EWGs, but with adjustments to reflect our previously used 10 percent voting interest threshold for non-EWGs and to eliminate certain language not applicable or necessary in the context of the FPA.[25] Accordingly, this definition applies for purposes of the blanket authorizations adopted under section 203.

22. Finally, with regard to the Oklahoma Commission's request for language that would allow state commissions to continue to receive notices of investigations of regulated public utilities, we note that it previously has not been the practice of the Office of Enforcement to inform state commissions of investigations that it is conducting.

Section 1b.9 of our regulations requires that all investigative proceedings shall be treated as non-public by the Commission and its staff except to the extent that the Commission authorizes public disclosure, the matter is made a matter of public record during an adjudicatory proceeding, or disclosure is required under the Freedom of Information Act.[26] The Commission concludes that the disclosure of such information could impede the willingness of market participants to self-report and otherwise cooperate in investigations. As such, we decline to grant the Oklahoma Commission's request.[27]

2. Reconciling the Proposed Blanket Authorization With the Presumption Provided in the Supplemental Policy Statement

a. Comments

23. Both the Financial Group and EEI question whether the blanket authorization is necessary in light of the

[20] EEI Comments at 8.

[21] *See* Blanket Authorization NOPR, FERC Stats. & Regs. ¶ 32,619 at P 9–11.

[22] *See, e.g.*, 18 CFR 366.4; 18 CFR 366.23; 18 CFR parts 367–68.

[23] *See* Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at n.48.

[24] 16 U.S.C. 824m.

[25] *See, e.g., Morgan Stanley Capital Group, Inc.*, 72 FERC ¶ 61,082, at 61,436–37 (1995).

[26] 18 CFR 1b.9.

[27] Our determination on this issue is also stated in the concurrently-issued Notice of Proposed Rulemaking in Docket Nos. AD07–7–000 and RM07–19–000 (Wholesale Competition in Regions with Organized Electric Markets) with regard to releasing information to state commissions on referrals by market monitoring units to the Commission for investigation.

Supplemental Policy Statement that creates a presumption of no transfer of control for security transfers of under 10 percent of a company's securities. They state that absent such a change in control, the Commission has indicated that a sale of securities is not a transaction subject to section 203(a)(1) jurisdiction. If that is the case, EEI questions why there should be a blanket authorization covering security transfers of up to 10 percent from utility companies to holding companies.

24. EEI also states that it assumes that the proposed blanket authorization is meant to supplement and not modify other blanket authorizations and clarifications so, for example, the new authorization would apply as to securities transfers only in excess of $10 million.

25. Mirant contends that, absent the Blanket Authorization NOPR, no pre-approval would be required from the Commission for a public utility to transfer up to 10 percent of voting securities, though it recognizes the ''possibility'' that there is a presumption that control could be exercised over the management or policies of the public utility. Accordingly, it states that the Commission should adopt the proposed blanket authorization to remove the presumption that exists in the Supplemental Policy Statement with respect to transfers of voting securities from a public utility to a public utility holding company. It further contends that the proposed blanket authorization will remove the inconsistency in the filing requirements between holding companies and public utilities.

b. Commission Determination

26. The Commission provided guidance in the Supplemental Policy Statement that a transfer of less than 10 percent would be rebuttably presumed not to be a transfer of control in order to assist applicants in determining the need for prior authorization under section 203, not to define the scope or limit of our jurisdiction. We agree with commenters that if there is no change in control of a public utility as a result of the transfer of a public utility's securities, then the public utility has not ''otherwise disposed'' of its jurisdictional facilities under section 203(a)(1)(A) and no Commission authorization is required. However, as the Commission stressed in the Supplemental Policy Statement, we cannot make an *ex ante* determination regarding what is control for purposes of the Commission's section 203 analysis absent facts of a specific case. The circumstances that convey control vary depending on a variety of factors, including the transaction structure, the nature of voting rights and/or contractual rights and obligations conveyed in the transaction. Because of the possibility that transfers of up to 10 percent *could* result in a change in control, the rebuttable presumption in the Supplemental Policy Statement and the blanket authorization should help eliminate uncertainties. Moreover, we view the ''in aggregate'' limitation in the blanket authorization as important to ensure that companies do not circumvent section 203(a)(1)(A) through multiple dispositions of less than 10 percent.

27. In response to EEI, we clarify that the new blanket authorization in this Final Rule is meant to supplement and not modify other blanket authorizations and clarifications in the Order No. 669 series. We also clarify that, consistent with the statute, it applies only to section 203(a)(1)(A) transfers of securities of a value in excess of $10 million.

3. Reporting Requirement

28. In the Blanket Authorization NOPR, the Commission sought comment on whether, in association with the proposed blanket authorization, additional reporting by the public utility should be required.

a. Comments

29. Most commenters, including EEI, the Financial Group, Mirant, and the Oklahoma Commission argue that the Commission should not impose a reporting requirement associated with the proposed blanket authorization. These commenters contend that no additional reporting obligation is required because the relevant information will be submitted by the holding company that is acquiring the securities.

30. EEI argues that if the Commission expands the proposed blanket authorization to cover jurisdictional transfer of securities by public utilities to other entities, the Commission may wish to impose a counterpart to the 18 CFR 33.1(c)(4) holding company reporting requirement on the public utility, but should do so only for those transactions not already covered by § 33.1(c)(4).

31. The Oklahoma Commission also argues that additional reporting is not needed. However, the Oklahoma Commission proposes that the relevant state commission be notified of additional reviews or requests about individual public utilities' current acquisition information. The Oklahoma Commission also urges the Commission to add language that states that section 203 does not preempt applicable state law concerning reporting requirements, which would further protect the interest and authority of state commissions.

32. In contrast, APPA/NRECA argue that the Commission should require a public utility to report on all dispositions of its securities undertaken pursuant to the blanket authorization. APPA/NRECA argue that the reporting burden is minimal and that the Commission should not have to (and, in fact, may not be able to) piece together this information from existing reports.

b. Commission Determination

33. We will not require additional reporting requirements at this time. In the Blanket Authorization NOPR, the Commission proposed not to impose additional reporting requirements because existing regulations require the submission of schedules and forms that are also provided to the SEC.[28] While we agree with APPA/NRECA that additional reporting requirements might provide greater efficiency to the Commission, at this time we believe the potential reporting burden on public utilities outweighs the possible efficiency gains.

34. We clarify, as requested by the Oklahoma Commission, that section 203 does not preempt applicable state law concerning reporting requirements. With regard to the Oklahoma Commission's request that state commissions be notified of additional reviews or requests about individual public utilities' current acquisition information, to the extent that such reviews or requests relate to an investigation, they are subject to the Commission's rules governing investigations as described *supra*. However, if the reviews or requests are made as the result of a public inquiry, such notification may be made. For example, the Commission's Division of Audits in the Office of Enforcement has provided notice of public final audit reports of jurisdictional companies to affected states. We continue to encourage our audits staff to continue this practice.

[28] For example, the Commission already requires the holding company to provide to the Commission copies of any Schedule 13D, Schedule 13G and Form 13F, at the same time and on the same basis, as filed with the SEC in connection with securities purchased, acquired or taken pursuant to the blanket authorization under section 203(a)(2) provided in § 33.1(c)(2) of the Commission's regulations. 18 CFR 33.1(c)(4).

B. Expansion of the Proposed Blanket Authorization

1. Blanket Authorization to ''Parallel'' Those Granted Under Section 203(a)(2)

a. Comments

35. The Blanket Authorization NOPR also requested comments on whether the proposed blanket authorization under section 203(a)(1) should be extended to the transfer of securities by a public utility to a holding company granted a blanket authorization: (1) § 33.1(c)(8) for a person that is a holding company solely with respect to owning one or more EWGs, FUCOs, or QFs to acquire the securities of additional EWGs, FUCOs, or QFs; (2) § 33.1(c)(9) for a bank holding company or subsidiary that is regulated by the Federal Reserve Board or Comptroller of the Currency to acquire and hold an unlimited amount of the securities of holding companies that include a transmitting utility or an electric utility company if such acquisitions and holdings are in the normal course of business and the securities are held for certain identified purposes [29]; and (3) § 33.1(c)(10) for a holding company or subsidiary to acquire public utility or holding company securities for underwriting or hedging purposes under certain conditions.[30]

36. EEI, the Financial Group and Mirant support extension of the blanket authorizations. They generally argue that if holding company acquisitions authorized by § 33.1(c)(8), (c)(9) and (c)(10) pose no concern warranting Commission review, counterpart public utility transfers subject to the same constraints should also pose no concern. They also argue that there is no benefit to the acquiring entity under a blanket authorization under section 203(a)(2) unless there is a reciprocal blanket authorization under section 203(a)(1).

37. In addition, the Financial Group recommends that the § 33.1(c)(8) blanket authorization be extended to companies that will become holding companies only after the transaction has been consummated (e.g., special purpose vehicles that are created to acquire and hold the jurisdictional assets of another company) in order for those companies to take advantage of the blanket. The Financial Group also argues that the proposed blanket authorization under section 203(a)(1) should be extended so that a public utility can transfer an unlimited amount of its securities to any entity that will acquire and hold such securities for the four purposes enumerated in § 33.1(c)(9). It asserts that the Commission has previously found in the section 203(a)(2) context that these types of transactions cannot harm competition or captive customers because the securities are being transferred for reasons other than to exercise control over the public utility. Thus, it argues, these transactions do not constitute a change in control over a public utility, which is the core focus of section 203(a)(1). Similarly, with regard to § 33.1(c)(10), the Financial Group argues that the proposed blanket authorization under section 203(a)(1) should be extended to a public utility transferring its securities to any entity.

38. APPA/NRECA argue against granting a parallel blanket authorization under section 203(a)(1) for a public utility to transfer securities of EWGs, FUCOs or QFs (to parallel § 33.1(c)(8)) or to transfer securities to a non-bank holding company or its subsidiary for purposes of engaging in hedging transactions (to parallel § 33.1(c)(10)). They argue that preauthorizing an EWG or QF that is a public utility to transfer all or any part of its securities to a holding company would enable a public utility to transfer control of its generation facilities to a holding company that already controls another public utility without Commission scrutiny of the transaction for competitive harm.

39. Regarding the proposal for a section 203(a)(1) blanket authorization to parallel § 33.1(c)(10), APPA/NRECA state that there is no basis for finding that transactions covered by this blanket are consistent with the public interest even with the 10 percent voting limitation imposed on the holding company.[31] Further, they state that ''hedging transactions'' are not defined in the regulations or in the NOPR, and there is no requirement that the acquiring company be in some business other than the utility, power or energy business, and thus no assurance that the hedging transaction is only incidental to the holding company's main business.[32] They recommend that, however, if the Commission were to grant a further blanket authorization under section 203(a)(1), it should contain a 10 percent ''in aggregate'' limitation.

b. Commission Determination

40. We will adopt the proposal to extend a blanket authorization under section 203(a)(1) to a public utility in circumstances where a holding company qualifies for, and the exercise of the blanket authorization is for the purpose of facilitating the transactions authorized under the § 33.1(c)(8), 33.1(c)(9) or a 33.1(c)(10) blanket authorization under section 203(a)(2).

41. As to the blanket authorization to parallel § 33.1(c)(8), we will require that the transfer of securities by a public utility to a holding company under that blanket be subject to the 10 percent ''in aggregate'' limitation as in the proposed limited blanket authorization described above. We recognize that the blanket authorization we adopt in this Final Rule to facilitate transactions undertaken by holding companies under § 33.1(c)(8) does not precisely parallel the section 203(a)(2) authorization since the section 203(a)(2) authorization does not include the ''in aggregate'' limitation. However, we believe this limitation will provide better protection against possible transfer of control of a public utility and the acquisition of generation market power by the

[29] The securities must be held: (i) As a fiduciary; (ii) as principal for derivatives hedging purposes incidental to the business of banking and it commits not to vote such securities to the extent they exceed 10 percent of the outstanding shares; (iii) as collateral for a loan; or (iv) solely for purposes of liquidation and in connection with a loan previously contracted for and owned beneficially for a period of not more than two years, with the following conditions and reporting requirement: The holding does not confer a right to control, positively or negatively, through debt covenants or any other means, the operation or management of the public utility or public utility holding company, except as to customary creditors' rights or as provided under the United States Bankruptcy Code; and the parent holding company files with the Commission on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held. 18 CFR 33.1(c)(9).

[30] For purposes of conducting underwriting activities, the blanket authorization is subject to the condition that holdings that the holding company or its subsidiary are unable to sell or otherwise dispose of within 45 days are to be treated as holdings as principal and thus subject to a limitation of 10 percent of the stock of any class unless the holding company or its subsidiary has within that period filed an application under FPA section 203 to retain the securities and has undertaken not to vote the securities during the pendency of such application; and the parent holding company files with the Commission on a public basis and within 45 days of the close of each calendar quarter, both its total holdings and its holdings as principal, each by class, unless the holdings within a class are less than one percent of outstanding shares, irrespective of the capacity in which they were held. For purposes of engaging in hedging transactions, the blanket authorization is subject to the condition that if such holdings are 10 percent or more of the voting securities of a given class, the holding company or its subsidiary shall not vote such holdings to the extent that they are 10 percent or more. 18 CFR 33.1(c)(10).

[31] Under § 33.1(c)(10)(ii), a holding company or its subsidiaries that acquire 10 percent or more of the voting securities of a public utility or a holding company for hedging transactions are limited to voting less than 10 percent of those securities.

[32] APPA/NRECA note that these problems already exist in the context of the blanket authorization under section 203(a)(2) provided in 18 CFR 3.1(c)(10)(ii).

acquiring holding company without Commission approval.

42. The Financial Group's request to extend the proposed section 203(a)(1) blanket to public utilities transferring securities to entities that will become holding companies only after the transaction has been consummated is moot because, as discussed above, the ''parallel'' 33.1(c)(8) blanket is restricted to cases where, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility. Therefore, the scenario presented by the Financial Group would not occur because an entity that was not previously a holding company could not become a holding company as a result of a transaction whereby the acquiring entity is limited to owning less than 10 percent of the shares of the public utility.[33]

43. As to the request for a blanket authorization under section 203(a)(1) to parallel that granted under section 203(a)(2) in § 33.1(c)(9), we note that that authorization under section 203(a)(2) applies only to acquisitions by bank holding companies or subsidiaries that are regulated by the Federal Reserve Board or Comptroller of the Currency (banks) of the securities of holding companies that include transmitting utilities and electric utility companies if such acquisitions and holdings are in the normal course of the acquiring bank's business and are held for certain purposes. In some cases the entity whose securities are acquired by the bank would have an obligation under section 203(a)(1) to seek Commission review before disposing of its securities. Typically, these cases would occur when the disposing holding company is a public utility and is also the issuer of the securities being acquired by the bank for those limited circumstances set forth in § 33.1(c)(9). As stated in Order No. 669–A, entities that are subject to the regulatory oversight of the Federal Reserve Bank or the Comptroller of the Currency ''are likely to be significantly constrained in their use of those securities so as to not affect regulation, rates or competition under the FPA.'' [34] Further, the Commission conditioned the authorization such that the holding of the securities does not confer a right to control the utility operation or management and required a quarterly reporting on the securities so held by the bank. Accordingly, we will adopt the proposal to extend the section 203(a)(1) blanket to a disposing holding company that is also a public utility. Because the entities eligible for the § 33.1(c)(9) blanket authorization are already subject to numerous conditions and reporting requirements, we do not believe additional conditions are required.

44. With respect to the Financial Group's request that the section 203(a)(1) blanket authorization be extended so that a public utility can transfer an unlimited amount of its securities to any entity that will acquire and hold such securities for the four enumerated purposes in § 33.1(c)(9), we cannot be assured that protections such as those that are in place for entities that are subject to the regulatory oversight of the Federal Reserve Bank or the Comptroller of the Currency would apply to entities that are not subject to such regulatory oversight. Therefore, we will continue to evaluate requests for blanket authorizations for entities that are not subject to regulatory oversight by the Federal Reserve Bank or the Comptroller of the Currency to acquire public utility securities, and for a public utility to transfer securities to such entities, on a case-by-case basis when such authorizations are needed.[35]

45. As to the request for a blanket authorization under section 203(a)(1) to facilitate the transactions authorized under § 33.1(c)(10), we grant an unlimited authorization for facilitating such transactions under section 203(a)(1). In granting the blanket authorization for the transactions for hedging purposes under section 203(a)(2), the Commission limited the voting ability of the entity acquiring the securities. If the amount held is 10 percent or more of the relevant class, the acquiring entity is limited to voting less than 10 percent of those securities. This existing condition on the party acquiring the securities for hedging purposes should be adequate to ensure that any disposing entity facilitating such transactions and requiring authorization under section 203(a)(1) does not affect a disposition or change in control of the issuer of the public utility securities.[36]

2. Blanket Authorization as to Certain Jurisdictional Contracts

46. In the Blanket Authorization NOPR, the Commission sought comment as to whether the Commission should grant a blanket authorization under section 203(a)(1) for the acquisition or disposition of a jurisdictional contract where neither the acquirer nor transferor has captive customers and the contract does not convey control over the operation of a generation or transmission facility.

a. Comments

47. The Commission received comments from: APPA/NRECA and Modesto (referred to herein as Customers); EEI, EPSA and Mirant (referred to herein as Sellers); and the Financial Group. Customers oppose the blanket authorization, Sellers support it, and the Financial Group not only supports it, but proposes expanding the blanket authorization.

48. Customers argue that the proposal would not protect transmission customers against cross-subsidization in the same way that captive wholesale and retail power customers are protected. They therefore propose narrowing the blanket authorization to cases where ''neither the acquirer nor the transferor has captive customers or owns or provides transmission service over Commission-jurisdictional facilities.'' [37] They also argue that, even if revised to include the situation where neither the acquirer nor the transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, allowing an entity such as a power marketer or independent power producer to transfer its book of jurisdictional power sales contracts at any time and without the purchaser's consent (which may or may not be expressly in the contract) would leave the purchaser with no recourse other than a section 206 complaint and the burden of proof and costs associated therewith. They maintain that purchasers under the jurisdictional contract, even if not ''captive'' may be a load-serving entity dependent on the contract for a reliable power supply or to meet regulatory or contractual obligations. They also maintain that a purchaser would have no say in the type of entity to whom a seller would transfer contracts, creating the possibility that the entity may not be a suitable counterparty based upon factors such as creditworthiness or other financial criteria, or inexperience in

[33] Transfers of securities that result in the acquiring company holding less than 10 percent of the outstanding voting shares of a public utility would have the presumption of not being a change in control and, therefore, not requiring section 203(a)(1) authorization. *See* Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 57.

[34] Order No. 669–A, FERC Stats. & Regs. 31,214 at P 124.

[35] *See Morgan Stanley*, 121 FERC ¶ 61,060 (2007), *clarified by*, 122 FERC ¶61,094 (2008); *The Goldman Sachs Group, Inc.*, 121 FERC ¶ 61,059 (2007), *clarified by*, 122 FERC ¶ 61,005 (2008).

[36] Order No. 669–A, FERC Stats. & Regs. ¶ 31,214 at P 132.

[37] APPA/NRECA Comments at 13–14.

administering the functions contemplated in the subject contract. Some Customers suggest that transfers may result in problems similar to the mortgage-loan business.

49. Sellers support the blanket authorization provided that it focuses only on transactions within the Commission's jurisdiction under section 203, and would supplement and not override or otherwise limit the proposed blanket authorization to parallel § 33.1(c)(2)(ii) or existing blanket authorizations. Sellers argue that with the stated constraints, the acquisition or disposition should pose no competitive or rate concerns or impacts on customers that would warrant case-by-case approval because: (1) The transfer of a wholesale power contract which does not provide for the control of generation or transmission cannot affect horizontal or vertical market power; (2) the transfer of a wholesale power contract to a party that does not have captive customers cannot affect the rates of captive customers (and therefore has no rate or cross-subsidization impacts); and (3) the transfer of a wholesale power contract does not affect the Commission's ability to regulate the contract or the parties to the transaction. Sellers assert that there is no regulatory purpose served by requiring section 203 approval for these transactions and states that it is unaware of a single instance where significant issues have been raised with respect to requests for approval of wholesale power contracts of this type. Further, Sellers argue that requiring pre-authorization in this circumstance results in delays and costs.

50. The Financial Group also supports the additional blanket authorization. In addition, it suggests that the blanket authorization not be limited to cases where the transferor also does not have captive customers. The Financial Group argues that where a transferor has captive customers, the issue is whether the transferor would be transferring the contract at a below-market price, thereby depriving its captive customers of the full value of the contract. However, where the transacting parties are not affiliates, it should be assumed that the transferor would seek market price, regardless of whether or not it has captive customers. Accordingly, it proposes the following addition to § 33.1(c): ''Any public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to dispose of, transfer, or acquire a contract for the sale of electric energy in interstate commerce where the contract does not convey control over the operation of a generation or transmission facility, the transferor and acquirer are not affiliated, and the acquirer does not have captive customers.'' [38]

b. Commission Determination

51. We adopt the proposed blanket authorization with modifications to address commenters' concerns. We agree with Sellers that the transfer of a wholesale power contract which does not provide for the control of generation or transmission cannot affect horizontal or vertical market power. We also agree that, with the modification proposed by APPA/NRECA, the transfer of a wholesale power contract from one party that does not have captive customers or owns or provides transmission service over jurisdictional transmission facilities to another party that also does not have captive customers or owns or provides transmission service over jurisdictional transmission facilities cannot affect the rates of captive customers or transmission customers (and therefore has no rate or cross-subsidization impacts). However, in at least one case involving a transfer from one affiliated company to another, significant issues were raised with respect to requests for section 203 approval of wholesale power contracts of this type.[39] Such transactions do not have the market discipline that is present in arm's-length negotiations between unaffiliated parties. Finally, Sellers' argument that the transfer of a wholesale power contract would not affect the Commission's ability to regulate the contract or the parties to the transaction ignores the possibility of the contract being transferred to a non-jurisdictional entity, in which case the Commission could lose the ability to regulate the contract or parties to the contract. Therefore, we will adopt the blanket authorization proposed in the Blanket Authorization NOPR, narrowing the blanket to apply in cases where neither the acquirer nor the transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, and adding the following language to the end of the proposed blanket authorization: the parties to the transaction are neither associate nor affiliate companies, and the acquirer is a public utility.

52. Customers argue that granting a blanket authorization for the transfer of such jurisdictional contracts without the purchaser's consent (which may or may not be expressly in the contract) would result in the purchaser having no say in the type of entity to whom a seller would transfer contracts, thus leaving the purchaser with no recourse other than a section 206 complaint and the burden of proof and costs associated therewith. We do not find that argument compelling because a section 203 proceeding is unlikely to be the forum for a purchaser to protect its interest under a contractual arrangement. The Commission has stated that contractual provisions are beyond the scope of a section 203 proceeding.[40] Based on our experience, as discussed above, the transfer of such contracts, with the additional conditions on the purchaser and acquirer of the contracts also discussed above, would not adversely affect competition, rates or regulation, and would not result in cross-subsidization, and therefore would be consistent with the public interest. Moreover, whether the contracts were being transferred pursuant to a blanket authorization or an individual section 203 authorization, purchasers would be able to protect their interests by exercising any relevant contractual provisions and, if necessary, by filing a section 206 complaint. Thus, granting the blanket authorization does not adversely affect a purchaser's ability to protect its interests.

53. We decline to adopt the Financial Group's proposal to expand the blanket authorization to cover cases where the transferor does have captive customers but the acquirer does not. We agree with the Financial Group that, presumably, the transferor would seek market price regardless of whether or not it has captive customers. However, captive customers of the transferor would not necessarily receive the benefit from such transactions and could be faced with paying higher rates due to increased costs for replacement power.

C. New Requests for Clarification and/or Blanket Authorizations

1. Blanket Authorization Under Section 203(a)(1) for Public Utility Sales of Non-Voting Securities

a. Comments

54. EEI argues that the Commission should disclaim jurisdiction under section 203(a)(1) over public utility sales of non-voting securities. EEI argues that such an authorization would parallel the authorization in 18 CFR 33.1(c)(2)(i) for holding companies to acquire non-voting securities, if the acquisition does not transfer control.

[38] Financial Group Comments at 18.

[39] *Mirant Corp.*, 111 FERC ¶ 61,425 (2005). Pursuant to its bankruptcy reorganization, Mirant transferred power agreements with PEPCO to a newly-formed entity within the corporate family.

[40] *See, e.g., American Electric Power Service Corporation*, 107 FERC ¶ 61,209, at P 17 (2004).

b. Commission Determination

55. We agree that if a non-voting security does not convey control, its transfer is not jurisdictional under the ''or otherwise dispose'' provision in section 203(a)(1)(A).[41] As the Commission stated in the Supplemental Policy Statement, and has recently held in case-specific requests for blanket authorizations under section 203(a)(1),[42] transactions that do not transfer control of a public utility or jurisdictional facilities do not fall within the ''otherwise dispose'' language of section 203(a)(1)(A) and thus do not require approval under section 203(a)(1)(A).[43] If a non-voting security conveys control (e.g., through veto rights or some other means), our requirements regarding transfers of control apply.

2. Clarification Regarding a Public Utility's Transfer of Securities to Its Holding Companies

a. Comments

56. EEI argues that the Commission should clarify that a public utility that is a subsidiary of a holding company may transfer its own securities to that holding company without a separate authorization as a counterpart to the 18 CFR 33.1(c)(2)(iii) authorization for holding companies to acquire such securities. EEI argues that because the holding company acquisition of such securities (which is inherently part of what it means to be a holding company) can result in no change of control, the Commission lacks jurisdiction.

b. Commission Determination

57. We find that a public utility that is the subsidiary of a single holding company may transfer its own securities to that holding company without a separate authorization under section 203(a)(2) for holding companies to acquire such securities. Where a single holding company system already has control of a subsidiary public utility, the transfer of securities from that public utility to the holding company would not be a change in control.[44]

3. Clarification Regarding the Internal Corporate Reorganization Blanket Authorization

a. Comments

58. EEI asks the Commission to discuss and/or revise the internal corporate reorganization blanket authorization under 18 CFR 33.1(c)(6) [45] to clarify that non-traditional public utilities with market-based rates should not be considered traditional public utilities merely by ownership of incidental transmission facilities.[46]

59. EEI states that while the Commission has clarified that the blanket authorization in 18 CFR 33.1(c)(6) allows ''upstream'' reorganizations of ''non-traditional public utilities,'' the blanket authorization does not allow the reorganization of a traditional public utility. EEI states that to qualify as a non-traditional public utility under the language of § 33.1(c)(6), the entity may not ''own or provide transmission service over jurisdictional transmission facilities.''

60. According to EEI, because many non-traditional utilities, including EWGs and others with market-based rates, own some incidental jurisdictional transmission facilities (e.g., step-up transformers), the blanket authorization rule for internal corporate reorganizations may unnecessarily restrict the reorganization of what otherwise would clearly be a non-traditional public utility. EEI argues that ownership of step-up transformers or other incidental transmission facilities should not change the fact that case-by-case approval by the Commission is unnecessary for the reorganization of such otherwise non-traditional utilities with no captive customers and whose reorganization would pose no cross-subsidization issues and would not change the ultimate control of the entities.

b. Commission Determination

61. We grant EEI's request for clarification. The term ''traditional public utility,'' as used in the Order No. 669 rulemaking proceeding was taken from prior Commission orders where the term was used to refer to utilities with franchised service territories.[47] In the Notice of Proposed Rulemaking prior to issuance of Order No. 669, the Commission further noted that, ''[i]n the context of considering cross-subsidization or affiliate abuse concerns associated with power transactions between public utility affiliates, the Commission has differentiated between utility activities and non-utility activities according to whether they were being conducted by a public utility with captive wholesale or retail customers served under cost-based rates (sometimes described as a 'traditional public utility').'' [48] In Order No. 669, the Commission continued to implicitly define traditional utility as a public utility with wholesale or retail customers served under cost-based regulation.[49] Thus, EWGs and other utilities that do not have franchised service territories are not considered to be ''traditional public utilities'' in the first instance, and therefore, their ownership of merely incidental transmission facilities does not make such a utility a traditional public utility by virtue of its ownership of those facilities.

D. Clarification of the Definition of ''Captive Customer''

62. In considering the comments in this docket, in response to the Affiliate Transactions NOPR and on rehearing of the Market-Based Rate Final Rule, and in reviewing the use of the definition of captive customers in our other rules, we believe it appropriate to modify the definition of captive customers to make explicit what was only implicit in our earlier rules—that the definition is intended to apply to customers served by a franchised public utility under cost-based regulation. Accordingly, the Commission will revise the definition of captive customers in 18 CFR 33.1(b)(5) to mean any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.

V. Information Collection Statement

63. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection and data retention

[41] We note that the situation is different under section 203(a)(2). Jurisdiction over acquisitions of securities under section 203(a)(2) attaches whether or not there is a transfer of control if the acquisition is over $10 million.

[42] Supplemental Policy Statement, FERC Stats. & Regs. ¶ 31,253 at P 37; *see, e.g., Legg Mason, Inc.*, 121 FERC ¶ 61,061, at P 18 (2007).

[43] This does not affect a public utility's responsibilities under sections 203(a)(1)(C) or 203(a)(1)(D), which apply to public utilities' acquisitions of public utility securities and generating facilities.

[44] Our determination here does not affect any separate requirement that the public utility may have under section 204 of the FPA regarding the issuance of securities. 16 U.S.C. 824c.

[45] This is a blanket authorization under both sections 203(a)(1) and section 203(a)(2) for internal corporation reorganizations that do not result in the reorganization of a traditional public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and that do not present cross-subsidization issues. 18 CFR 33.1(c)(6).

[46] EEI notes that it is not proposing to expand the blanket authorization for internal corporate reorganizations to cover the transfer of assets from one non-traditional public utility subsidiary to another, as such proposal was rejected in the Supplemental Policy Statement.

[47] *See, e.g., Sierra Pacific Power Co.*, 95 FERC ¶ 61,193, at 61,178–79 (2001).

[48] *Transactions Subject to FPA Section 203*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,589, at P 43 (2005). In Order No. 669, the Commission continued to define ''traditional public utility'' as those with wholesale or retail customers served under cost-based regulation. Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 169.

[49] Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 169.

requirements imposed by agency rules.[50] The information collection requirements in this Final Rule are identified under the Commission's data collection, FERC–519, ''Applications Under Federal Power Act Section 203.'' Under section 3507(d) of the Paperwork Reduction Act of 1995,[51] the reporting requirements in this rulemaking will be submitted to OMB for review.

64. The ''public protection'' provisions of the Paperwork Reduction of 1995 require each agency to display a currently valid control number and inform respondents that a response is not required unless the information collection displays a valid OMB control number on each information collection or provides a justification as to why the information collection control number cannot be displayed. In the case of information collections published in regulations, the control number is to be published in the **Federal Register**.

Public Reporting Burden: As the Commission stated in the Blanket Authorization NOPR, the regulations should have a minimal impact on the current reporting burden associated with an individual application, as they do not substantially change the filing requirements with which section 203 applicants must currently comply. Further, the Commission does not expect the total number of section 203 applications under amended section 203 to increase, but rather expects the total number of section 203 applications to decrease. This is because the regulations provide categories of jurisdictional transactions for which the Commission would not require applications seeking before-the-fact approval. This would reduce the burden on the electric industry because it will reduce the number of applications that need to be made to the Commission. The Commission received eight comments on the Blanket Authorization NOPR and no entity specifically addressed the Commission's information collection statement.

The Commission is submitting a copy of this Final Rule to OMB for review and approval. In their notice of November 28, 2007, OMB took no action on the Blanket Authorization NOPR, instead deferring their approval until review of the Final Rule.

Title: FERC–519, ''Application Under the Federal Power Act, Section 203.''

Action: Revised Collection.

OMB Control No: 1902–0082.

The applicant will not be penalized for failure to respond to this information collection unless the information collection displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Businesses or other for profit.

Frequency of Responses: N/A.

Necessity of the Information: This Final Rule codifies limited blanket authorizations under FPA section 203(a)(1), providing for categories of jurisdictional transactions under section 203(a)(1) for which the Commission would not require applications seeking before-the-fact approval.

Internal Review: The Commission has conducted an internal review of the public reporting burden associated with the collection of information and assured itself, by means of internal review, that there is specific, objective support for its information burden estimate.

65. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202) 502–8415, fax (202) 273–0873, e-mail: *michael.miller@ferc.gov*]. Comments on the requirements of the Final Rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, fax (202) 395–7285, e-mail *oira_submission@omb.eop.gov*].

VI. Environmental Analysis

66. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[52] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[53] The Final Rule is categorically excluded as it ''do[es] not substantially change the effect of legislation or regulations being amended'' and addresses actions under section 203.[54] Accordingly, no environmental assessment is necessary and none has been prepared in this Final Rule.

VII. Regulatory Flexibility Act

67. The Regulatory Flexibility Act of 1980 (RFA)[55] generally requires a description and analysis of Final Rules that will have significant economic impact on a substantial number of small entities.[56] However, the RFA does not define ''significant'' or ''substantial.'' Instead, the RFA leaves it up to an agency to determine the effect of its regulations on small entities.

68. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.[57] Moreover, as noted above, this Final Rule codifies blanket authorizations under FPA section 203(a)(1), providing for categories of jurisdictional transactions under section 203(a)(1) for which the Commission would not require before-the-fact approval. Thus, filing requirements are reduced by the rule. Therefore, the Commission certifies that the Final Rule will not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required.

VIII. Document Availability

69. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

70. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three

[50] 5 CFR 1320.

[51] 44 U.S.C. 3507(d).

[52] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[53] 18 CFR 380.4.

[54] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(16).

[55] 5 U.S.C. 601–12.

[56] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh. 13 CFR 121.201.

[57] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

digits of this document in the docket number field.

71. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

IX. Effective Date and Congressional Notification

72. These regulations are effective March 31, 2008. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 33

Electric utilities, Reporting and recordkeeping requirements, Securities.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends Part 33, Chapter I, Title 18, *Code of Federal Regulations*, to read as follows:

PART 33—APPLICATIONS UNDER FEDERAL POWER ACT SECTION 203.

■ 1. The authority citation for part 33 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; Pub. L. 109–58, 119 Stat. 594.

■ 2. In § 33.1, paragraph (b)(5) is revised to read as follows:

§ 33.1 Applicability, definitions, and blanket authorizations.

* * * * *

(b) * * *

(5) For purposes of this part, the term captive customers means any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.

■ 3. In § 33.1, paragraphs (c)(12) through (c)(15) are added to read as follows:

§ 33.1 Applicability, definitions, and blanket authorizations.

* * * * *

(c) * * *

(12) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to any holding company granted blanket authorizations in paragraph (c)(2)(ii) of this section if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility.

(13) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to any holding company granted blanket authorization in paragraph (c)(8) of this section if, after the transfer, the holding company and any of its associate or affiliate companies in aggregate will own less than 10 percent of the outstanding voting interests of such public utility.

(14) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to any holding company granted blanket authorization in paragraph (c)(9) of this section.

(15) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act to transfer its outstanding voting securities to any holding company granted blanket authorization in paragraph (c)(10) of this section.

(16) A public utility is granted a blanket authorization under section 203(a)(1) of the Federal Power Act for the acquisition or disposition of a jurisdictional contract where neither the acquirer nor transferor has captive customers or owns or provides transmission service over jurisdictional transmission facilities, the contract does not convey control over the operation of a generation or transmission facility, the parties to the transaction are neither associate nor affiliate companies, and the acquirer is a public utility.

[FR Doc. E8–3812 Filed 2–28–08; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM07–15–000; Order No. 707]

Cross-Subsidization Restrictions on Affiliate Transactions

Issued February 21, 2008.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: In this Final Rule, pursuant to sections 205 and 206 of the Federal Power Act, the Federal Energy Regulatory Commission (Commission) is amending its regulations to codify restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, and their market-regulated power sales affiliates or non-utility affiliates. These restrictions will supplement other restrictions the Commission has in place to protect captive customers of franchised public utilities or transmission customers of franchised public utilities that own or provide transmission service over jurisdictional transmission facilities from inappropriate cross-subsidization of affiliates.

DATES: *Effective Date:* This Final Rule will become effective March 31, 2008.

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SUPPLEMENTARY INFORMATION: *Before Commissioners:* Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

Final Rule

1. On July 20, 2007, the Commission issued a Notice of Proposed Rulemaking to codify affiliate restrictions that would be applicable to all power and non-power goods and services transactions between franchised public utilities with captive customers and their market-regulated power sales and non-utility affiliates.[1] After receiving comments in response to the Affiliate Transactions NOPR, the Commission amends Part 35 of its regulations, pursuant to sections

[1] *Cross-Subsidization Restrictions on Affiliate Transactions,* Notice of Proposed Rulemaking, 72 FR 41644 (July 31, 2007), FERC Stats. & Regs. ¶ 32,618 (2007) (Affiliate Transactions NOPR).

205 and 206 of the Federal Power Act (FPA), to adopt such restrictions.[2]

2. Finalization of this rulemaking is one of a number of steps the Commission has taken following the repeal of the Public Utility Holding Company Act of 1935 [3] to ensure that customers of franchised public utilities do not inappropriately cross-subsidize the activities of ''non-regulated'' affiliates, and are not otherwise financially harmed as a result of affiliate transactions and activities. The restrictions in this Final Rule will provide certainty to public utilities and customers with respect to the pricing standard that must be applied to certain affiliate transactions. While the Commission already has in place affiliate rules that apply to public utilities with market-based rates and to public utilities seeking merger approvals, the restrictions in this rule will supplement existing restrictions and will apply to all franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities. Thus, they will strengthen the Commission's ability to ensure that customers are protected against affiliate abuse and that rates remain just and reasonable.

I. Background

3. Under sections 205 and 206 of the FPA, the Commission must ensure that the rates, terms and conditions of jurisdictional service are just, reasonable and not unduly discriminatory or preferential. As part of the Commission's obligation in administering this FPA standard, it ensures that wholesale customers' rates do not reflect costs that are the result of undue preferences granted to affiliates or that are imprudent or unreasonable as a result of affiliate transactions. The Commission has a long history of scrutinizing affiliate transactions for potential cross-subsidization and in recent rulemakings and orders it has codified and expanded affiliate restrictions, both under its FPA section 205–206 rate authority (in the context of market-based rates) and under its FPA section 203 merger authority. As discussed *infra,* pursuant to its FPA section 205–206 authority, in this Final Rule the Commission will extend similar restrictions to all franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities. As historical backdrop, however, we first discuss our past and existing practices with respect to affiliate transactions in the context of market-based rates and mergers.

A. Affiliate Transactions in the Context of Market-Based Rate Authorizations

1. Historical Approach

4. The Commission began considering proposals for market-based pricing of wholesale power sales and attendant cross-subsidy issues in 1988. The Commission acted on market-based rate proposals filed by various wholesale suppliers on a case-by-case basis. In doing so, the Commission considered, among other things, whether there was evidence of affiliate abuse or reciprocal dealing involving the seller or its affiliates.[4] As the Commission explained, ''[t]he Commission's concern with the potential for affiliate abuse is that a utility with a monopoly franchise may have an economic incentive to exercise market power through its affiliate dealings.'' [5] The Commission also stated its concern that a franchised public utility and an affiliate may be able to transact in ways that transfer benefits from the captive customers of the franchised public utility to the affiliate and its shareholders.[6] Where a franchised public utility makes a power sale to an affiliate, the Commission is concerned that such a sale could be made at a rate that is too low, in effect, transferring the difference between the market price and the lower rate from captive customers to the market-regulated affiliated entity. Where a power seller with market-based rates makes power sales to an affiliated franchised public utility, the concern is that such sales could be made at a rate that is too high, which would give an undue profit to the affiliated entity at the expense of the franchised public utility's captive customers.[7] In determining whether to allow power sales affiliate transactions, the Commission, over time, has adopted several methods, all of which have focused on ensuring that captive customers are adequately protected against affiliate abuse.

5. Just as the Commission has expressed concern about the potential for affiliate abuse in connection with power sales between affiliates, it also has recognized that there may be a potential for affiliate abuse through other means, such as the pricing of non-power goods and services or the sharing of market information between affiliates.[8] The same concerns about giving undue profits to affiliated market-regulated entities and their shareholders, discussed above with respect to power sales, also apply with respect to these interactions.

6. Accordingly, the Commission's policy for many years had been to require that, as a condition of market-based rate authorization, applicants adopt a code of conduct applicable to non-power goods and services transactions and information sharing between regulated and non-regulated (market-regulated) affiliated power sellers. The Commission has also required that applicants include a provision in their market-based rate tariffs prohibiting power sales between regulated and non-regulated affiliated power sellers without first receiving authorization of the transaction under section 205 of the FPA.[9]

7. The purpose of the market-based rate code of conduct was to safeguard against affiliate abuse by protecting against the possible diversion of benefits or profits from franchised public utilities (i.e., traditional public utilities with captive ratepayers) to an affiliated entity for the benefit of shareholders. The Commission has waived the market-based rate code of conduct requirement in cases where there are no captive customers, and thus no potential

[2] 16 U.S.C. 824d, 824e.

[3] 16 U.S.C. 79a *et seq.* (PUHCA 1935).

[4] *See Heartland Energy Services Inc.,* 68 FERC ¶ 61,223, at 62,062 (1994) (*Heartland*) (discussing the potential for abuse in the case of affiliated power marketers); *Commonwealth Atlantic Limited Partnership,* 51 FERC ¶ 61,368, at 62,245 (1990) (discussing potential for reciprocal dealing if a buyer agrees to pay more for power from a seller in return for that seller (or its affiliates) paying more for power from that buyer (or its affiliates)).

[5] *Boston Edison Company Re: Edgar Electric Energy Co.,* 55 FERC ¶ 61,382, at 62,137 n.56 (1991) (*Edgar*). *See also TECO Power Services Corp.,* 52 FERC ¶ 61,191, at 61,697 n.41, *order on reh'g,* 53 FERC ¶ 61,202 (1990) (''The Commission has determined that self dealing may arise in transactions between affiliates because affiliates have incentives to offer terms to one another which are more favorable than those available to other market participants.'').

[6] *See, e.g., Heartland,* 68 FERC at 62,062.

[7] The Commission has found that a transaction between two non-traditional utility affiliates (such as power marketers, exempt wholesale generators (EWGs), or qualifying facilities (QFs)) does not raise the same concern about cross-subsidization because neither has a franchised service territory and therefore has no captive customers. As the Commission has explained, no matter how sales are conducted between non-traditional affiliates, profits or losses ultimately affect only the shareholders. *FirstEnergy Generation Corporation,* 94 FERC ¶ 61,177, at 61,613 (2001); *USGen Power Services, L.P.,* 73 FERC ¶ 61,302, at 61,846 (1995). With respect to affiliate power sales, the Commission has also developed guidelines on how to determine whether a transaction is above suspicion and captive customers are protected, as well as guidelines for competitive solicitation processes. *See Edgar,* 55 FERC at 62,167–69; *Allegheny Energy Supply Company, LLC,* 108 FERC ¶ 61,082, at 61,417 (2004).

[8] *See, e.g., Potomac Electric Power Company,* 93 FERC ¶ 61,240, at 61,782 (2000) (*Potomac*); *Heartland,* 68 FERC at 62,062–63.

[9] *Aquila, Inc.,* 101 FERC ¶ 61,331, at P 12 (2002).

for affiliate abuse, or where the Commission finds that such customers are adequately protected against affiliate abuse.[10] In such cases, however, the Commission directed the utilities to notify the Commission should they acquire captive customers in the future and expressly reserved the right to reimpose the market-based rate code of conduct requirement.

2. The Market-Based Rate Final Rule

8. In the Commission's recent Market-Based Rate Final Rule,[11] among other things, the Commission codified in the regulations at 18 CFR part 35, subpart H, an explicit requirement that any seller with market-based rate authority must comply with the affiliate power sales restrictions and other affiliate restrictions. Compliance on an ongoing basis is a condition of retaining market-based rate authority. The Market-Based Rate Final Rule retains the policy that wholesale sales of power between a franchised public utility and any of its market-regulated power sales affiliates must be pre-approved by the Commission. It also adopts uniform affiliate restrictions governing power sales, sales of non-power goods and services, separation of functions, and information sharing between franchised public utilities with captive customers and their market-regulated power sales affiliates.[12] The power and non-power goods and services restrictions, however, apply only to transactions involving two power sellers. They do not apply to transactions between a franchised public utility and a non-utility affiliate.

B. Affiliate Transactions Under Section 203

1. Before the Energy Policy Act of 2005

9. The Commission has also addressed cross-subsidization issues in the context of section 203 merger applications. Prior to the Energy Policy Act of 2005,[13] the Commission's policy was to condition its approval of certain section 203 mergers on the applicants' agreement to abide by certain restrictions on non-power goods and services transactions between a merged company's utility and non-utility or market-regulated subsidiaries. The condition was imposed on those mergers involving registered holding companies under PUHCA 1935[14] in order to find that the merger would not adversely affect federal regulation.[15] That requirement grew out of judicial determinations that, when a merger would create or involve a registered holding company, the actions of the Securities and Exchange Commission (SEC) may preclude the Commission from asserting jurisdiction over the non-power transactions between subsidiaries of that holding company.[16] Under *Ohio Power*, if the SEC approved an affiliate contract involving special purpose subsidiary goods or services at cost, the Commission had to allow pass-through of the costs in jurisdictional rates even if the public utility purchasing the goods or services could have obtained them at a lower market price from a non-affiliate.[17] For over a decade following the *Ohio Power* decision, the Commission required that, to gain section 203 approval of a proposed merger without a hearing, if the transaction would create a registered holding company under the PUHCA 1935, applicants must agree to waive the *Ohio Power* immunity and abide by the Commission's policy on intra-system transactions for non-power goods and services.[18]

2. After EPAct 2005

10. Because EPAct 2005 repealed PUHCA 1935, certain activities of previously-registered holding companies that were previously subject to SEC regulation, including intra-system affiliate transactions, are no longer exempt from this Commission's full regulatory review. In particular, the Commission's conditions and policies under FPA sections 205 and 206 with respect to non-power goods and services transactions between holding company affiliates may now be applied to all public utilities that are members of holding companies, whether in the context of a section 203 merger proceeding or the context of a section 205–206 rate proceeding.[19] In addition, the Commission has authority to review allocation of service company costs among members of holding companies that have public utilities with captive customers.

11. In the Order No. 669 rulemaking proceedings,[20] which revised the Commission's regulations pursuant to amended section 203, the Commission continued its past approach with respect to affiliate abuse restrictions involving power and non-power goods and services transactions, in the context of section 203 applications.[21] However, the Commission made two additional clarifications.

12. First, in its implementation of regulations pursuant to PUHCA 2005,[22] the Commission discussed one exception to the traditional standards articulated in the 1996 Merger Policy Statement. In the Order No. 667

[10] *See, e.g., CMS Marketing, Services and Trading Co.,* 95 FERC ¶ 61,308, at 62,051 (2001) (granting request for cancellation of code of conduct where wholesale contracts, as amended, ''cannot be used as a vehicle for cross-subsidization of affiliate power sales or sales of non-power goods and services''); *Alcoa Inc.,* 88 FERC ¶ 61,045, at 61,119 (waiving code of conduct requirement where there were no captive customers); *Green Power Partners I LLC,* 88 FERC ¶ 61,005, at 61,010–11 (1999) (waiving code of conduct requirement where there are no captive wholesale customers and retail customers may choose alternative power suppliers under retail access program).

[11] *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, 72 FR 39904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007) (Market-Based Rate Final Rule).

[12] *Id.* P 23.

[13] Energy Policy Act of 2005, Pub. L. 109–58, 1289, 119 Stat. 594, 982–83 (2005) (EPAct 2005).

[14] EPAct 2005 repealed PUHCA 1935. EPAct 2005, Pub. L. 109–58, 1263.

[15] *See, e.g., Niagara Mohawk Holdings, Inc.,* 95 FERC ¶ 61,381, at 62,414, *order on reh'g,* 96 FERC ¶ 61,144 (2001).

[16] *See Ohio Power Co.* v. *FERC,* 954 F.2d 779, 782–86 (D.C. Cir.), *cert. denied sub nom., Arcadia* v. *Ohio Power Co.,* 506 U.S. 981 (1992) (*Ohio Power*).

[17] The Commission's policy since the mid-1990s has been that where the regulated public utility has provided non-power goods or services to the non-regulated affiliate, the public utility provides the goods or services at the higher of cost or market. A non-regulated affiliate that sells non-power goods or services to an affiliate with captive customers may not sell at higher than market price. This is often referred to as the ''market'' standard. These standards were articulated in the Commission's 1996 Merger Policy Statement. *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement,* Order No. 592, 61 FR 68595 (Dec. 30, 1996), FERC Stats. & Regs. ¶ 31,044, at 30,124–25 (1996) (1996 Merger Policy Statement), *reconsideration denied,* Order No. 592–A, 62 FR 33341 (June 19, 1997), 79 FERC ¶ 61,321 (1997).

[18] *Public Service Company of Colorado,* 75 FERC ¶ 61,325, at 62,046 (1996) (*PSC Colorado*); 1996 Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124–25.

[19] The provisions of PUHCA 1935 that formed the basis for *Ohio Power* are no longer in effect, thus removing the *Ohio Power* limitation on our oversight of non-power transactions. Further, FPA section 318, which provided for SEC preemption in certain circumstances where there was a conflict between SEC PUHCA 1935 regulation and Commission regulation, was repealed.

[20] *Transactions Subject to FPA Section 203,* Order No. 669, 71 FR 1348 (Jan. 6, 2006), FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g,* Order No. 669-A, 71 FR 28422 (May 16, 2006), FERC Stats. & Regs. ¶ 31,214, *order on reh'g,* Order No. 669-B, 71 FR 42579 (July 27, 2006), FERC Stats. & Regs. ¶ 31,225 (2006).

[21] Amended section 203(a)(4) adds to the Commission's merger analysis the explicit requirement that the Commission find that any proposed transaction will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless that cross-subsidization, pledge, or encumbrance will be consistent with the public interest.

[22] PUHCA 2005 is primarily a books and records access statute and does not give the Commission any new substantive authorities, other than the requirement that the Commission review and authorize certain non-power goods and services cost allocations among holding company members upon request. EPAct 2005, Public Law 109–58, 1275.

rulemaking proceeding,[23] the Commission explained that there are two circumstances in which the at-cost or market standards may arise in the context of the Commission's jurisdictional responsibilities: (1) The Commission's review of the costs of non-power goods and services provided by a traditional, centralized service company to public utilities within the holding company system; and (2) when a service company that is a special-purpose company within a holding company provides non-power goods or services to one or more public utilities in the same holding company system. Under both scenarios, similar concerns regarding affiliate abuse arise: ''[W]hether the public utility's costs incurred in purchasing from the affiliate are prudently incurred and just and reasonable, and whether non-regulated affiliates purchasing non-power goods and services from the same special-purpose company are receiving preferential treatment vis-à-vis the public utility.'' [24] In Order No. 667, the Commission exempted traditional, centralized service companies, which at that time were using the SEC's ''at-cost'' standard, from complying with the Commission's market standard for their sales of non-power goods and services to regulated affiliates.[25] In determining that the at-cost standard was appropriate for traditional, centralized service companies, the Commission noted that centralized provision of the services provided by such companies (such as accounting, human resources, legal, tax, and other such services) benefits ratepayers through increased efficiency and economies of scale. Moreover, the Commission recognized that it is frequently difficult to define the market value of the specialized services provided by centralized service companies. On this basis, the Commission stated it would apply a rebuttable presumption that costs incurred under at-cost pricing of such services are reasonable.[26] However, with respect to non-power goods and services transactions between holding company affiliates other than traditional, centralized service companies, i.e., service companies that are non-regulated, special-purpose affiliates, such as a fuel supply company or a construction company, the Commission continued with its prior practice.[27]

13. Second, in recent section 203 merger proceedings, the Commission has extended the applicability of the code of conduct restrictions previously applied only to registered holding companies. In *National Grid plc,*[28] the Commission announced that it would require all merging parties to abide by a code of conduct containing specific provisions regarding power and non-power goods and services transactions between the utility subsidiaries and their affiliates:

> Implementation of the Code of Conduct for all utility subsidiaries of the merged company, as required by our decision here, will address both power and non-power goods and services transactions between the utility subsidiaries and their affiliates. The Code of Conduct to be implemented by the merged company shall (1) require our approval of all power sales by a utility to an affiliate, (2) require a utility with captive customers to provide non-power goods or services to a non-utility or ''non-regulated utility'' affiliate at a price that is the higher of cost or market price, (3) prohibit a non-utility or non-regulated utility affiliate from providing non-power goods or services to a utility affiliate with captive customers at a price above market price, and (4) prohibit a centralized service company from providing non-power services to a utility affiliate with captive customers at a price above cost. These requirements protect a utility's captive customers against inappropriate cross-subsidization of non-utility or non-regulated utility affiliates by ensuring that the utility with captive customers neither recovers too little for goods and services that the utility provides to an affiliate nor pays too much for goods and services that the utility receives from an affiliate. Implementation of these requirements provides a prophylactic mechanism to ensure that the merger will not result in cross-subsidization of non-utility or non-regulated utility companies in the same holding company system and therefore meets the requirement of section 203(a)(4) that a merger not result in inappropriate cross-subsidization of a non-utility associate company.[29]

14. While these affiliate restrictions are broad in terms of transactions covered (covering transactions between power sales affiliates as well as transactions between power sales affiliates and non-utility affiliates) and have been extended within the context of section 203 approvals, they do not apply to public utilities that do not need to seek section 203 merger approval.

II. Affiliate Transactions NOPR

15. In the Affiliate Transactions NOPR, the Commission proposed to implement uniform affiliate restrictions that would be applicable to all franchised public utilities with captive customers and their market-regulated and non-utility affiliates and would address both power and non-power goods and services transactions between the utility and its affiliates.[30] The Commission's goal in proposing these prophylactic restrictions is to protect against inappropriate cross-subsidization of market-regulated and unregulated activities by the captive customers of franchised public utilities. The proposed restrictions are based upon those already imposed by the Commission in the context of certain section 203 and 205 approvals, but expand the transactions and entities to which they apply.

16. Specifically, the proposed regulations would: (1) Require the Commission's approval of all wholesale sales between a franchised public utility with captive customers and a market-regulated power sales affiliate; (2)

[23] *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005,* Order No. 667, 70 FR 75592 (Dec. 20, 2005), FERC Stats. & Regs. ¶ 31,197 (2005), *order on reh'g,* Order No. 667-A, 71 FR 28446 (May 16, 2006), FERC Stats. & Regs. ¶ 31,213, *order on reh'g,* Order No. 667-B, 71 FR 42750 (July 28, 2006), FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh'g,* 72 FR 8277 (Feb. 26, 2007), 118 FERC ¶ 61,133 (2007).

[24] Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 168.

[25] *Id.* P 169.

[26] *Id.* The Commission stated, however, that it would entertain complaints that at-cost pricing for such services exceeds the market price, but complainants would have the burden of demonstrating that that is the case.

[27] In Order No. 667, the Commission stated that, with respect to sales from a public utility to a non-regulated, affiliated special-purpose company, the price should be no less than cost, *i.e.,* the higher of cost or market; otherwise, a public utility could attempt to game the system and forego profits it could otherwise obtain by selling to a non-affiliate, to the benefit of its non-regulated affiliate who receives a good or service at a below-market price. The Commission also stated that, when the situation is reversed, *i.e.,* the non-regulated, affiliated special-purpose company is providing non-power goods and services to the public utility affiliate, the Commission will continue to apply its market standard. Accordingly, the non-regulated, affiliated special-purpose company may not sell to its public utility affiliate at a price above the market price. The Commission found that such transactions involving such non-regulated, affiliated special-purpose companies pose a greater risk of inappropriate cross-subsidization and adverse effects on jurisdictional rates. *Id.* P 171.

[28] 117 FERC ¶ 61,080 (2006) (*National Grid*).

[29] *Id.* P 66 (internal citations removed).

[30] On July 20, 2007, the Commission took three actions based on the Commission's experience implementing amended FPA section 203 and PUHCA 2005, as well as the record from the Commission's December 7, 2006 and March 8, 2007 technical conferences regarding section 203 and PUCHA 2005. In this docket, the Commission issued the Affiliate Transactions NOPR. In addition, in separate orders, the Commission issued a section 203 Supplemental Policy Statement, and a Notice of Proposed Rulemaking proposing additional blanket authorizations under section 203 of the FPA. *FPA Section 203 Supplemental Policy Statement,* 72 FR 42277 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008); *Blanket Authorization Under FPA Section 203*, Notice of Proposed Rulemaking, 72 FR 41640 (July 31, 2007), FERC Stats. & Regs. ¶ 32,619 (2007) (Blanket Authorization NOPR); *see Blanket Authorization Under FPA Section 203*, Order No. 708, 122 FERC ¶ 61,156 (2008) (Blanket Authorization Final Rule).

require a franchised public utility with captive customers to provide non-power goods and services to a market-regulated power sales affiliate or a non-utility affiliate at a price that is the higher of cost or market price; (3) prohibit a franchised public utility with captive customers from purchasing non-power goods or services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market price (with the exception of (4)); and (4) prohibit a franchised public utility with captive customers from receiving non-power goods and services from a centralized service company at a price above cost. The Commission stated that these restrictions would help the Commission meet the requirement of amended section 203(a)(4) that a transaction not result in the inappropriate cross-subsidization of a non-utility associate company and, moreover, help the Commission assure just and reasonable rates and the protection of captive customers for all public utilities pursuant to sections 205 and 206 of the FPA, irrespective of whether they need approval of a section 203 transaction.

III. Procedural Matters

17. The Affiliate Transactions NOPR invited comments on the proposed regulations. Comments on the Affiliate Transactions NOPR were filed by: American Public Power Association and National Rural Electric Cooperative Association (APPA/NRECA); Edison Electric Institute (EEI); Entergy Services, Inc. (Entergy); Interstate Gas Supply, Inc. (IGS); National Grid USA (National Grid); New York State Public Service Commission (New York Commission); NiSource Inc. (NiSource); Occidental Power Marketing, L.P. (Occidental); Oklahoma Corporation Commission (Oklahoma Commission); Pacific Gas and Electric Company (PG&E); the Pinnacle West Companies (Pinnacle West);[31] and San Diego Gas & Electric Company and Southern California Gas Company (Sempra).[32]

IV. Discussion

18. This Final Rule explains the Commission's authority and jurisdiction under sections 205 and 206 of the FPA to regulate affiliate transactions to ensure that public utility rates are just, reasonable, and not unduly discriminatory or preferential. This Final Rule implements affiliate restrictions applicable to power sales and transactions for non-power goods and services between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, and their market-regulated and non-utility affiliates.

A. General Matters

1. The Need for the Proposed Regulations

a. *Comments*

19. EEI argues that the Commission has not demonstrated a need for the proposed regulations. While EEI agrees that the Commission has been applying affiliate transactions restrictions in the context of section 203 and market-based rates,[33] EEI argues that the Affiliate Transactions NOPR goes too far. EEI argues that the Commission does not provide any examples of the problems that the Commission has discovered in the pricing of utility-affiliate transactions that would warrant the expanded new regulations. EEI also argues that there is sufficient regulatory oversight by the Commission and state commissions, so this extension of policy is not warranted.

20. Moreover, EEI argues that the Commission's authority to regulate utility-affiliate transactions under sections 205 and 206 is limited to determining whether jurisdictional rates are just and reasonable. EEI argues that the Commission has not demonstrated why the proposed regulations are necessary to achieve a just and reasonable result. EEI also argues that the Affiliate Transactions NOPR indirectly proposes to regulate entities over which the Commission has no jurisdiction—EWGs, QFs, and non-utilities—by imposing constraints on the prices that utilities may pay these companies for non-power goods and services and the companies in turn must pay the utilities for such goods and services.[34]

21. EEI also argues that the Commission's adoption of the rules as a ''prophylactic'' measure ignores the wording of the Commission's cross-subsidy authority under section 203 by failing to recognize that certain transactions may be in the public interest.

b. *Commission Determination*

22. We disagree with EEI regarding the need for the proposed regulations or the Commission's authority to enact them. Sections 205 and 206 of the FPA require the Commission to ensure that public utility rates are just, reasonable and not unduly discriminatory or preferential. A rate is not just and reasonable if it includes costs which the Commission finds are imprudently incurred or which require a customer to bear costs that are unreasonable. Further, the Commission must ensure that no public utility makes or grants an undue preference with respect to any transmission or sale subject to the Commission's jurisdiction.[35] The Commission has the authority to address these types of rate issues not only in individual cases, but also to set standards by rulemaking with respect to what costs will or will not be considered just and reasonable. The Commission's experience makes clear the need for these types of restrictions and we believe they are particularly warranted in light of the repeal of PUHCA 1935 and our need to be vigilant with respect to holding companies and affiliate transactions.

23. As discussed above, the Commission has a long history of requiring public utilities to comply with affiliate restrictions where an entity seeks market-based rate authorization and in the context of seeking merger authorization under section 203 of the FPA. However, limiting affiliate restrictions to these two contexts leaves a regulatory gap. As the Affiliate Transactions NOPR explained, (1) restrictions on market-based rate applicants do not cover non-power goods and services transactions between a franchised public utility and non-utilities; they cover only transactions between power sales affiliates and are imposed on only the market-based rate applicants; (2) restrictions imposed on section 203 applicants only apply to merger applicants; (3) the pricing policy set forth in Order No. 667 regarding non-power goods and services provided by centralized service companies was not codified in the regulations; and (4) not all states regulate these types of

[31] For purposes of their filing, the Pinnacle West Companies include: Pinnacle West Marketing & Trading Co., LLC; Arizona Public Service Company; and APS Energy Services Company, Inc.

[32] Although unnecessary to preserve their rights to participate in a rulemaking proceeding, Allegheny Power and Allegheny Energy Supply Company, LLC filed a motion to intervene without comments.

[33] EEI asserts that the Affiliate Transactions NOPR states that the Commission currently waives market-based rate code of conduct requirements and allows transactions in cases where there are no captive customers or customers are protected against affiliate transactions, but that exception is not reflected in the Market-Based Rate Final Rule.

[34] EEI Comments at 6–7 (citing *Sunray Mid-Continental Co.* v. *FPC*, 364 U.S. 137, 142 (1960); *Altamont Gas Transmission Co.* v. *FERC*, 92 F.3d 1239 (D.C. Cir. 1996); *National Fuel Gas Supply Corp.* v. *FERC*, 909 F.2d 1519 (D.C. Cir. 1990)).

[35] Although section 203 of the FPA requires the Commission to recognize that certain cross-subsidization or pledges or encumbrances of utility assets can be in the public interest, the proposed regulations are set forth pursuant to the Commission's authority under sections 205 and 206 of the FPA.

transactions.[36] The purpose of the proposed regulations therefore is to supplement existing affiliate restrictions to cover transactions between all franchised public utilities with captive customers and their non-utility affiliates. Just as the Commission has adopted regulations designed to prevent captive customers of franchised public utilities from inappropriately cross-subsidizing the activities of market-regulated affiliates (such as affiliated power marketers), so too the Commission wants to ensure that captive customers of franchised public utilities do not inappropriately cross-subsidize the activities of non-utility affiliates (such as an affiliated construction services firm, real estate company, legal services companies, fuel supply companies, or other non-utility affiliates). For example, where a franchised public utility with captive customers transacts with an affiliated non-utility construction services firm, the Commission is concerned that the franchised public utility with captive customers not pay an above-market price for construction services provided by the affiliated construction firm. Otherwise, the public utility's customers would be inappropriately cross-subsidizing the activities of the affiliate. Indeed, non-utility affiliates such as real estate companies, legal services companies, fuel supply companies or other companies selling non-power goods and services could provide similar opportunities for affiliate abuse and improper cross-subsidization.

24. Finally, we disagree with EEI that the Affiliate Transactions NOPR indirectly proposes to regulate entities over which the Commission ''has no jurisdiction''—EWGs, QFs, and non-utilities. As an initial matter, the Commission does, in fact, have certain jurisdiction over QFs, and most EWGs are jurisdictional public utilities. More importantly, however, the pricing rules we adopt here are rooted in our authority to impose pricing rules with respect to certain sales and purchases by public utilities (including EWGs) over whom we have rate jurisdiction under the FPA. These restrictions are tied directly to the reasonableness of public utility rates and the Commission has the statutory responsibility to protect captive customers from unjust and unreasonable rates.

2. The Scope of the Proposed Regulations

a. *Comments*

25. Several commenters filed comments concerning the scope of the proposed regulations. APPA/NRECA ask that the Commission clarify that the regulations adopted in this proceeding do not preclude the Commission from imposing additional cross-subsidization restrictions on affiliate transactions as appropriate on a case-by-case basis.

26. The Oklahoma Commission notes that the Commission stated that it would require all merging parties to abide by a code of conduct that has specific provisions regarding power and non-power goods and services transactions between the utility subsidiaries and their affiliates. The Oklahoma Commission urges to the Commission to continue to do so. The Oklahoma Commission also asks that the Commission add language that states that section 203 does not preempt applicable state law concerning reporting requirements, which would further protect the interest and authority of state commissions.

27. IGS agrees with the Commission's proposal to codify affiliate restrictions but suggests that the intent of the code of conduct requirement also includes preventing a utility or its affiliate from gaining unfair advantages in a market, thus impeding the development of a competitive market. IGS agrees that a code of conduct should be codified and expanded to apply to non-power goods and services, and that a code of conduct and related rules should also apply outside the context of merger situations. IGS also agrees that, even outside of the context of a merger, it is important that utility/affiliate code of conduct and related rules apply. IGS further agrees that it is appropriate for the code of conduct and related rules to apply to transactions involving non-power goods and services because, among other things, consumers may not be able to differentiate easily between affiliates and traditional regulated utility and where affiliates are provided preferential access and opportunities, competition is stifled. In addition, IGS argues that the same opportunity for abuse exists in the natural gas industry. It maintains that the same affiliate restriction concepts should be extended to natural gas utilities, and should be considered whenever the utility has an economic interest in the sale of the commodity or non-commodity goods or services.

28. Occidental argues that the proposed regulations permit a utility to circumvent the affiliate transactions restrictions by simply conducting all of its market-based rate activities within its franchised public utility. Occidental asks that the Commission explicitly require that the functional attributes, rather than the arbitrary structure, of a utility be considered in determining compliance with the rule's affiliate abuse restrictions.

b. *Commission Determination*

29. We agree with APPA/NRECA that the pricing rules that we adopt in this proceeding do not preclude the Commission from imposing additional cross-subsidization restrictions on affiliate transactions, as appropriate, on a case-by-case basis.

30. Regarding the Oklahoma Commission's request that we continue to require all merging parties to abide by a code of conduct that has specific provisions regarding power and non-power goods and services transactions between the utility subsidiaries and their affiliates, although this rulemaking is not under section 203, as discussed *supra*, as a condition of section 203 authorization for mergers, we have already stated in the context of section 203 proceedings that we will continue to impose affiliate restrictions on entities seeking merger authorization under section 203 of the FPA. Further, we clarify that neither the rules we adopt here, nor the cross-subsidization restrictions imposed under section 203 of the FPA, preempt applicable state law concerning reporting requirements.

31. We deny IGS' request to expand the proposed regulations to include preventing a utility or its affiliate from gaining unfair advantage in a market. The scope of the proposed regulations is to protect against inappropriate cross-subsidization of affiliates by franchised public utilities with captive customers. We note, however, the cross-subsidy protections go a long way to preventing such unfair advantages since market-regulated or non-regulated companies may have an unfair competitive advantage in the marketplace if others bear some of their costs of doing business.

32. We also deny IGS' request to expand the scope of the proposed regulations to include the natural gas industry. As discussed above, the focus of this rulemaking is public utilities—specifically, franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities. We find that there is an insufficient record to warrant including LDCs and interstate pipelines within the scope of the regulations at this time.

33. Finally, we decline to revise the scope of the proposed regulations to address Occidental's concern that the proposed regulations permit a utility to circumvent the affiliate transactions restrictions by simply conducting all of

[36] Affiliate Transactions NOPR, FERC Stats. & Regs. ¶ 32,618 at P 15.

its market-based rate activities within its franchised public utility. We note that Occidental has raised this concern in its request for rehearing of the Market-Based Rate Final Rule. We find that this concern is more appropriately addressed on rehearing of that order.

B. Specific Issues

1. Definitions

a. *Captive Customers*

i. *Comments*

34. Commenters seek a number of clarifications concerning the definition of ''captive customers.''

35. EEI and Pinnacle West ask the Commission to clarify that wholesale customers with fixed price contracts are not ''captive customers'' even if the contracts are cost-based, because there is no risk of harm to such customers from utility-affiliate transactions.

36. Occidental argues that the Commission should revise the definition of ''captive customer'' to not include wholesale customers. Occidental argues that the Commission clarified in the Market-Based Rate Final Rule that retail customers that have retail choice are not captive customers. Occidental maintains that wholesale customers, whether cost-based or market-based, have alternatives and therefore, are not captive. Accordingly, Occidental argues that the definition of ''captive customer'' should be limited to retail customers served under cost-based regulation who do not have retail choice available, and should not include wholesale customers which have choices.

37. EEI, National Grid, and Pinnacle West ask the Commission to clarify its definition of ''captive customers'' consistent with its use of the term in the preamble of the Market-Based Rate Final Rule. In this regard, they ask that the Commission clarify that retail customers in states with retail competition are not ''captive customers'' for purposes of the affiliate restrictions. Pinnacle West also states that the Commission clarified in Order No. 697 that, for companies the Commission has acknowledged in prior orders as not having captive customers, the affiliate transaction restrictions can be waived. It asks the Commission to provide the same clarification and exemptions in this proceeding.

38. IGS, on the other hand, argues that the restrictions proposed in the Affiliate Transactions NOPR should not be waived for utilities simply because those utilities implement a retail choice program. IGS argues that the ability of a customer to purchase commodities from an alternative power supplier under a retail access program does not mean that these customers are not captive for purposes of receiving their distribution service under cost-based legislation. IGS also states that the restrictions should apply even if the retail customer has a competitive alternative available. It further argues that, as long as a utility is in the business of providing commodity service, there is an opportunity for abuse.

39. EEI and National Grid also ask that the Commission clarify that ''captive customers'' do not include transmission customers, consistent with the Market-Based Rate Final Rule. By contrast, APPA/NRECA ask that the definition of ''captive customers'' be expanded to expressly include transmission customers. APPA/NRECA state that the Commission recognized in both the Order No. 669 series and the Order No. 667 series that transmission customers must be protected against cross-subsidization along with captive wholesale and retail customers. They note that the Commission adopted regulatory language in Order No. 669–A ''to cover public utilities that own or provide transmission service over Commission-jurisdictional transmission facilities,'' and ask that the Commission clarify the regulatory text in the Final Rule to ensure that the new generic cross-subsidization regulation explicitly protects transmission customers.

40. APPA/NRECA also ask that the Commission confirm, consistent with the Market-Based Rate Final Rule, that the affiliate transactions rules do not apply to electric cooperatives.

ii. *Commission Determination*

41. The term ''captive customers'' is used in a number of recently adopted Commission rules, including Order No. 667, Order No. 669, and the Market-Based Rate Final Rule. The Commission for many years had used this term in its orders without definition, but in both the Order No. 669 series and the Market-Based Rate Final Rule, the Commission included in the regulatory text a definition or description of ''captive customers'' as: ''any wholesale or retail electric energy customers served under cost-based regulation.'' [37] Based on the comments received, we recognize that there may be some ambiguity as to what types of customers are considered to be under ''cost-based regulation'' and we provide additional clarifications below. We also modify the definition to make clear that it is intended to refer to customers of franchised public utilities. First, however, we believe it is important to discuss the purpose of our definition and its focus on ''cost-based regulation.''

42. The Commission's fundamental goal in categorizing certain customers as ''captive'' is to protect customers served by franchised public utilities from inappropriately subsidizing the market-regulated or non-utility affiliates of the franchised public utility or otherwise being financially harmed as a result of affiliate transactions and activities. In other words, we are concerned about the potential for the inappropriate transfer of benefits from such customers to the shareholders of the franchised public utility or its holding company.[38] Where customers are served under market-based regulation as opposed to cost-based regulation, it is presumed that the seller has no market power over a customer and that the customer has a choice of suppliers; thus, there is less opportunity for a customer to involuntarily be in a situation in which its rates subsidize or support another entity.

43. Under a regime of cost-based regulation, however, we cannot make these same assumptions. If a franchised public utility is selling at a wholesale cost-based rate under the FPA, the franchised utility seller may be in the position of potentially trying to flow through its cost-based rates costs that should instead be borne by its affiliates, *i.e.,* potentially subsidizing the ''non-regulated'' activities of its market-regulated and non-utility affiliates to the detriment of the franchised public utility's customer(s). While there is some merit to Occidental's assertion that wholesale customers, by definition, have alternatives and that there is no obligation for a wholesale seller to sell to any buyer, nor for a buyer to buy from any particular seller, for the customer protection reasons stated above, we believe it is important to err on the side of a broad definition of captive customers.

[37] Order No. 669–A, FERC Stats. & Regs. ¶ 31,214 at P 147; Market-Based Rate Final Rule, FERC Stats. & Regs. ¶ 31,252 at P 23; *see also* Order No. 667–A, FERC Stats. & Regs. ¶ 31,213 at n.35.

[38] For example, if a market-regulated seller sells power to its affiliated franchised public utility at an above market price, the customers of the franchised public utility pay more than they need to for power and the affiliate makes a higher profit for the holding company's shareholders. Similarly, if a franchised public utility sells temporarily excess fuel to its market-regulated power seller affiliate at a price below its cost, the customers of the franchised utility end up subsidizing the affiliate's operating costs, to the benefit of shareholders and the detriment of the customers of the franchised utility. In other contexts, an extreme example would be a holding company that siphons funds from a franchised public utility to support its failing non-regulated affiliate company; again, this results in financial benefit to shareholders at the expense of customers.

44. Although we are erring on the side of a broad definition of captive customers, we recognize that there may well be circumstances in which customers fall within our definition but nevertheless there are sufficient protections in place to protect such customers against any risk of harm from transactions between the franchised public utility and its affiliates. For example, it is possible, as advocated by EEI and Pinnacle West, that wholesale customers with fixed rate contracts would be adequately protected and that the affiliate restrictions of this rule should not apply to utilities whose customers all have fixed rate contracts with no fuel adjustment clause.[39] We are not prepared at this time to generically exclude such customers from the definition of captive customers but instead will allow franchised public utilities, on a case-by-case basis, to seek a waiver of the affiliate restrictions. This will allow the Commission to closely examine the facts related to each franchised public utility. There may be circumstances other than fixed rate contracts in which we may be willing to waive the affiliate restrictions of this rule, but a public utility will need to demonstrate that there is no opportunity for wholesale customers of the franchised public utility to be harmed as a result of affiliate transactions.

45. With respect to requested clarifications regarding retail customers in states with retail competition, consistent with our Market-Based Rate Final Rule, we clarify that customers with retail choice are not considered to be customers served under ''cost-based regulation'' and therefore are not considered captive customers. These customers have retail choice, i.e., by virtue of state law they can purchase at market-based rates from retail suppliers other than a franchised public utility.[40] As the Commission explained in the Market-Based Rate Final Rule, in a regulatory regime in which retail customers have no ability to choose a supplier, they are considered captive because they must purchase from the local utility pursuant to rates set by a state or local regulatory authority. However, retail customers in retail choice states who choose to buy power from their local utility at cost-based rates as part of that utility's provider-of-last resort obligation are not considered captive customers because, although they may choose not to do so, they have the ability to take service from a different supplier whose rates are set by the marketplace.[41] We clarify, however, that if a state regulatory authority in a retail choice state does not believe retail customers are sufficiently protected and that our affiliate restrictions should apply to the local franchised public utility, it may file a petition for declaratory order to deem its retail customers to be captive customers for purposes of applying the affiliate restrictions.[42]

46. As a general matter, we also clarify that the definition of captive customers, and our interpretations of the term, are intended to be applied uniformly in implementing all of our rules. In connection with the affiliate restrictions adopted in the Market-Based Rate Final Rule, we clarified that those affiliate restrictions will not apply where a seller demonstrates, and the Commission agrees, that the seller has no captive customers.[43] We also clarified that any sellers that have previously demonstrated and been found not to have captive customers, and therefore have received a waiver of the market-based rate code of conduct requirement in whole or in part, will not be required to request another waiver of the associated affiliate restrictions.[44] We will adopt a similar approach with regard to the cross-subsidization affiliate restrictions that we adopt in this Final Rule. If a utility makes a showing that it has no captive customers, and the Commission agrees, the affiliate cross-subsidization restrictions will not apply. If a public utility has received a finding that it has no captive customers for purposes of meeting the market-based rate affiliate restrictions, such filing will be deemed sufficient here. However, the utility must make an informational filing with the Commission stating that the affiliate restrictions we adopt in this Final Rule do not apply.

47. Further, in considering the comments in this docket and in the Market-Based Rate Final Rule (pending rehearing), and in reviewing the use of the definition of captive customers in our other rules, we believe it appropriate to modify the definition of captive customers to make explicit what was only implicit in our earlier rules—that the definition is intended to apply to customers served by a franchised public utility under cost-based regulation. Accordingly, we will modify the term to mean: ''any wholesale or retail electric energy customers served *by a franchised public utility* under cost-based regulation.'' [45]

48. In response to clarification requests by APPA/NRECA that we modify our proposed regulatory text so that the affiliate restrictions apply not only to franchised public utilities that have captive customers but also to public utilities that own Commission-jurisdictional transmission facilities or provide Commission-jurisdictional transmission service, we will grant the request. Thus, the affiliate restrictions will apply where a franchised public utility has captive customers or owns or provides transmission service over Commission-jurisdictional transmission facilities. While some franchised public utilities have captive customers, others do not, although they own or provide transmission service over Commission-jurisdictional transmission facilities.[46] The customers of these franchised public utilities also should not inappropriately be required to subsidize ''non-regulated'' activities of the affiliates of such utilities.[47]

[39] The Commission would need to be assured that all wholesale customers of a franchised public utility have adequate fixed rate contracts, not just a sub-set of the customers. Further, because such contracts may have different expiration dates, the Commission might need to place temporal conditions on such a waiver.

[40] As further discussed in the Market-Based Rate Final Rule, the role of this Commission is not to evaluate the success or failure of a state's retail choice program including whether sufficient choices are available for customers inclined to choose a different supplier. In this regard the states are best equipped to make such a determination and, if necessary, modify or otherwise revise their retail access programs as they deem appropriate. Further, to the extent a retail customer in a retail choice state elects to be served by its local utility under provider-of-last resort obligations, the state or local rate setting authority, in determining just and reasonable cost-based retail rates, would in most circumstances be able to review the prudence of affiliate purchased power costs and disallow pass-through of costs incurred as a result of an affiliate's undue preference. Market-Based Rate Final Rule, FERC Stats. & Regs. ¶ 31,252 at P 481. Also, we note that some states have chosen to impose their own affiliate restrictions in such circumstances.

[41] *Id.* If the retail choice program is not available to all customers in the state, those customers that do not have retail choice would be considered captive customers of the franchised public utility that serves them, and our affiliate restrictions would apply to the franchised public utility.

[42] Under the Commission's regulations, states are exempt from filing fees for petitions for declaratory order. 18 CFR 381.108.

[43] Market-Based Rate Final Rule, FERC Stats. & Regs. ¶ 31,252 at P 552.

[44] *Id.* P 551.

[45] We recognize that this amended definition will result in redundancy in certain of our regulations since some regulations refer to ''franchised public utilities with captive customers'' and other regulations simply refer to ''captive customers'' without elaboration. However, we believe the amendment will eliminate possible confusion in future interpretations.

[46] A public utility that has no captive power customers but that owns or provides transmission service over Commission-jurisdictional facilities may seek a waiver of the affiliate restrictions if it can demonstrate that transmission customers are adequately protected against inappropriate cross-subsidization.

[47] For example, if a franchised public utility owns transmission facilities and also owns a non-utility construction services firm, the public utility's customers should not pay an above market price for

49. Finally, we clarify that, consistent with the Market-Based Rate Final Rule, we will continue to treat electric cooperatives as not subject to the Commission's affiliate abuse restrictions.[48]

b. *Non-Utility Affiliate*

i. *Definition of ''Affiliate''*

(a) *Comments*

50. PG&E asks the Commission to clarify the definition of ''affiliate,'' as used in the definition of non-utility affiliate.[49] PG&E states that the Commission should clarify whether the proposed regulations use the definition of affiliate set forth in the PUHCA 2005 regulations or some other definition.

(b) *Commission Determination*

51. In response to PG&E's request for clarification concerning the definition of affiliate in the proposed regulations, we have considered the use of the term affiliate in the context of the Affiliate Transactions NOPR, the Commission's Standards of Conduct for Transmission Providers, and other precedent.[50] We have also reviewed the affiliate definitions contained in both the PUHCA 1935 and PUHCA 2005 and have considered the fact that, with respect to certain affiliate preferences or advantages involving EWG rates and charges, we are specifically required by FPA section 214 [51] to use the definition contained in PUHCA 1935. After taking into account these differing definitions of affiliate (or, in some cases, no definition at all, as in the context raised by PG&E), and recognizing the need to provide greater clarity and consistency in our rules, we believe it is important to try to adopt a more consistent definition in our various rules and also one that is sufficiently broad to allow us to adequately protect customers.[52]

52. Our goal is to have a more consistent definition of affiliate for purposes of both EWGs and non-EWGs to the extent possible, as well as to strengthen the Commission's ability to ensure that customers are protected against affiliate abuse. Accordingly, having studied the clarity and scope of various definitions, we believe it appropriate to modify the definition proposed in the Affiliate Transactions NOPR to explicitly incorporate the PUHCA 1935 definition of affiliate for EWGs (rather than incorporate it by reference as previously has been done). We will also adopt the PUHCA 1935 definition of affiliate for non-EWGs, but with adjustments to reflect our previously-used 10 percent voting interest threshold for non-EWGs and to eliminate certain language not applicable or necessary in the context of the FPA. This is discussed more fully below.

53. In the case of non-EWG public utilities, our past approach has been that a voting interest of 10 percent creates a rebuttable presumption of control for purposes of determining the existence of an affiliate relationship.[53] For EWGs, on the other hand, section 214 of the FPA specifies that the term affiliate shall have the same meaning as provided in section 2(a) of PUHCA 1935 (which, *inter alia*, contains a five percent voting interest test) for purposes of determining whether an electric utility is an affiliate of an EWG for purposes of evaluating EWG rates. Although PUHCA 2005 also contains a definition of affiliate, which has been incorporated in § 366.1 of our regulations, that definition is not the same as the definition contained in PUHCA 1935. Indeed, it is narrower than the definition contained in PUHCA 1935.[54]

54. In particular, the PUHCA 2005 definition defines affiliate of a company to mean ''any company, 5 percent or more of the outstanding voting securities of which are owned, controlled, or held with power to vote, directly or indirectly, by such company.'' The PUHCA 1935 definition, on the other hand, also defines as an affiliate of a specified company ''any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company'' and ''any individual who is an officer or director of such specified company, or of any company which is an affiliate thereof * * *.'' In addition, the PUHCA 1935 definition also includes in the definition of affiliate ''any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to such specified company that there is liable to be such an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person * * *'' be treated as an affiliate.

55. Because FPA section 214 directs the Commission to use the definition of affiliate that appears in PUHCA 1935 with respect to certain affiliate preferences affecting rates or charges of EWGs, we will revise the definition proposed in the Affiliate Transactions NOPR to be consistent with the PUHCA 1935 definition.[55]

56. We also will revise the definition of ''affiliate'' for purposes of non-EWGs utilities to be consistent with the definition of ''affiliate'' for EWGs, except to the extent we believe it may leave a gap in coverage or contains language not applicable to the FPA. The definition we adopt for non-EWGs essentially parallels the EWG definition (with certain exceptions that we discuss below), while retaining the 10 percent voting interest threshold contained in the current regulations. Use of the PUHCA 1935 definition for non-EWGs may capture under the definition of ''affiliate'' entities that otherwise would not have been treated as affiliates under the definition currently in place in the Commission's regulations. We believe it is appropriate to adopt a broader definition, one that is largely consistent with the definition for EWGs, because it will strengthen the Commission's ability to ensure that customers are protected against affiliate abuse. For example, the revised affiliate definition for non-EWGs will give the Commission the ability to treat an entity as an affiliate of a company if, after notice and opportunity for hearing, the Commission finds that ''there is liable to be such an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers'' that such entity be treated as an affiliate. It also is consistent with other recent orders and rules (e.g., the Supplemental Policy Statement) in which we have provided greater clarity as to what is considered ''control'' of an entity.

57. While the affiliate definition we adopt for non-EWGs essentially

construction services to upgrade transmission facilities.

[48] Market-Based Rate Final Rule, FERC Stats. & Regs. ¶ 31,252 at P 526.

[49] As defined in the proposed regulations, ''non-utility affiliate'' means ''any affiliate that is not in the power sales or transmission business.''

[50] *See, e.g., Morgan Stanley Capital Group, Inc.*, 72 FERC ¶ 61,082, at 61,436–37 (1995) (*Morgan Stanley*).

[51] 16 U.S.C. 824m.

[52] For example, we adopt this definition of affiliate for purposes of section 203 of the FPA in the concurrent Blanket Authorization Final Rule.

[53] *See Morgan Stanley*, 72 FERC at 61,436–37; 18 CFR 358.3(b) and (c).

[54] It is not clear whether some of the language from PUHCA 1935 was inadvertently omitted from the PUHCA 2005 definition or whether Congress thought a more narrow definition was appropriate with respect to a ''books and records'' access statute. In either case, the PUHCA 1935 definition provides a more ''bright line'' approach while still reserving the agency's ability to deem an entity an affiliate based on specific circumstances, thus better ensuring the ability to protect customers.

[55] Section 214 provides that no rate or charge of an EWG shall be lawful if, after notice and opportunity for hearing, the Commission finds that it resulted from any undue preference or advantage received from an electric utility that is an associate or affiliate of the EWG.

parallels the EWG definition, there are a number of exceptions. One exception is that the non-EWG definition also defines an affiliate of a specified company to include ''any person that is under common control with such specified company.'' This language is included in the definition of non-EWG affiliate that currently is in the Commission's regulations and identifies an additional instance in which an entity will be deemed to be an affiliate of a specified company. On this basis, we believe it appropriate to include this language as part of the non-EWG definition. Because the ''under common control with'' language is not part of the PUCHA 1935 definition, however, we cannot also include it as part of the definition of affiliate for purposes of EWGs. We also include as part of the non-EWG affiliate definition a provision making clear that where a person owns, controls, or holds with power to vote less than 10 percent of the outstanding voting securities of a specified company, this creates a rebuttable presumption of lack of control. Although the PUHCA 1935 definition does not contain a parallel provision with regard to the five percent threshold in the case of EWGs, we nevertheless believe that it is appropriate to include this rebuttable presumption as part of the non-EWG definition because it provides greater clarity concerning the circumstances in which an entity will be presumed not to be an affiliate.

58. Another exception concerns the provision in the PUHCA 1935 definition that includes as an affiliate of a specified company ''any individual who is an officer or director of such specified company, or of any company which is an affiliate thereof * * *.'' We do not believe it necessary to include that language as part of the affiliate definition for non-EWGs because we already are including in the definition, a provision giving the Commission the ability to treat an entity as an affiliate if, after notice and opportunity for hearing, the Commission finds that there is liable to be an absence of arm's-length bargaining in transactions between two entities.[56]

59. In sum, we believe that the definition of affiliate that we adopt in this Final Rule will provide greater clarity to public utilities and customers with respect to identifying which entities are considered to be affiliates for purposes of the regulations that we adopt in this Final Rule.

ii. *Definition of ''Non-Utility Affiliate''*

(a) *Comments*

60. NiSource argues that the Commission should revise the definition of non-utility affiliate because it could inadvertently include state-regulated local distribution companies (LDCs) and Commission-regulated interstate pipelines because they are not in the power sales or transmission business. NiSource notes that the regulatory text strongly suggests that the Commission intended the definition of non-utility affiliate to apply only to ''unregulated'' entities. NiSource argues that this is important because any franchised public utility with captive customers would have to price sales of non-power goods and services to any non-utility affiliate at the higher of cost or market. NiSource argues that imposing this pricing requirement on LDCs and Commission-regulated interstate pipelines (as non-utility affiliates): (1) Is inconsistent with the intent of the regulations, which is to prevent cross-subsidization of a ''non-utility associate company'' as derived from PUHCA 1935 and PUHCA 2005, (2) could conflict with state requirements, and (3) is unnecessary because the Commission and the states have ample authority to review such transactions.

(b) *Commission Determination*

61. We agree with NiSource and clarify that the definition of non-utility affiliate does not apply to utility affiliates that sell or transport natural gas, such as LDCs, or Commission-regulated interstate pipelines. However, we will not foreclose the expansion of the definition of non-utility affiliate to include LDCs and/or interstate pipelines if circumstances warrant it in the future.

2. Pricing Non-Power Affiliate Transactions

62. In the Affiliate Transactions NOPR, the Commission proposed to implement affiliate restrictions that would be applicable to transactions for non-power goods and services between franchised public utilities with captive customers and their market-regulated and non-utility affiliates. Specifically, the Commission proposed that: (1) A franchised public utility with captive customers that provides non-power goods and services to a market-regulated power sales affiliate or a non-utility affiliate should charge a price that is the higher of cost or market price; (2) a franchised public utility with captive customers should be prohibited from purchasing non-power goods and services at a price above market price from market-regulated power sales affiliates and non-utility affiliates, with the exception of centralized service companies;[57] and (3) a franchised public utility with captive customers should be prohibited from buying non-power goods and services from a centralized service company at a price above cost.[58] The Affiliate Transactions NOPR indicated that each of the proposed restrictions was consistent with restrictions previously imposed in the 203-merger context.[59]

a. *Comments*

63. Several commenters suggest that the Commission's proposal will raise prices within holding company systems by creating inefficiencies. Specifically, EEI, Entergy, NiSource and PG&E argue that the Commission should require at-cost pricing for all transactions within a holding company system regardless of whether the services are provided for or by the franchised public utility. They contend that an at-cost standard creates savings through economies of scale that apply whether the employee providing the non-power good or service is located in a centralized service company, a utility or another affiliate. In addition, they note that it is difficult to find a market price for affiliate transactions for such goods and services.

64. EEI and PG&E further argue that requiring a utility to charge an affiliate the ''higher of cost or market'' would likely increase costs to both the utility and the affiliate by discouraging the efficient sharing of services. As a substitute for the ''higher of cost or market'' requirement for sales by a franchised public utility to an affiliate, they state that the Commission should allow the fully loaded cost to be a proxy for the market price for sales of non-power services by a utility to its affiliates.

65. National Grid argues that at-cost pricing for sales of non-power goods and services provided by a franchised public utility to a centralized service company would be consistent with the Commission's rationale for allowing at-cost pricing for sales in the opposite direction. It states that the Commission established at-cost pricing in Order No. 667 to encourage centralization of certain services that provide economies of scale that benefit customers, and that these benefits occur whether a

[56] With respect to this provision, we note that we are omitting language referencing the duties, obligations and liabilities imposed by PUHCA 1935 since those are no longer applicable in light of repeal of PUHCA 1935.

[57] Order No. 667 defines centralized service companies as performing generally corporate administration functions, such as accounting, human resources, legal and tax services, while special-purpose non-utility affiliates provide generally a single input to utility operations, such as fuel supply, construction or real estate. Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 171 n.178.

[58] Affiliate Transactions NOPR, FERC Stats. & Regs. ¶ 32,618 at P 16.

[59] *See, e.g., National Grid*, 117 FERC ¶ 61,080 at P 66.

franchised public utility is buying or selling non-power goods or services to or from its centralized service company. It argues that requiring at-cost pricing for transactions from a centralized service company to a franchised public utility on the one hand, while requiring at-the-higher-of-cost-or-market pricing for transactions from a franchised public utility to a centralized service company on the other hand, creates a bifurcated-pricing structure that undermines efficient pricing within a holding company. It further argues that tracking which transactions are ''at market'' and which transactions are ''at cost'' adds a level of complexity to the accounting within holding companies, and identifying the market prices for certain non-power goods and services that may be sold by franchised public utilities to centralized service companies is difficult.

66. In contrast, the New York Commission focuses on whether the Commission's proposed pricing standards adequately protect captive customers from cross-subsidization. Specifically, it challenges the Commission's proposal to prohibit a franchised public utility with captive customers from purchasing non-power goods and services at a price above market price from market-regulated power sales affiliates and non-utility affiliates, with the exception of centralized service companies. It asserts that this standard would allow utilities to purchase non-power goods or services from an affiliated entity at market prices and may allow holding companies to structure affiliate transactions so that utilities with captive customers would pay above-cost charges. It states that where an affiliate makes central purchases on behalf of several utilities, the affiliate will likely obtain discounts in the prices it pays due to the combined volume of purchases. The New York Commission contends, however, that the Commission's proposal would allow the central purchasing affiliate to charge each utility up to the prevailing market price which otherwise would be incurred if the utilities made their own separate purchases, and the result would provide a source of affiliate cross-subsidization in an amount equivalent to the incremental purchase quantity discount.

67. As an alternative, the New York Commission proposes that the Commission require utilities to record purchases of covered items from their affiliates at the lower of actual cost or market prices. It contends that this standard would protect captive utility customers against paying affiliates more than the affiliate's actual costs.

68. Commenters also made recommendations on the appropriate relationship between state and Commission affiliate-pricing standards. In particular, EEI, National Grid and Pinnacle West argue that, at the very least, the Commission should avoid unnecessary duplication or conflict with state provisions. In particular, EEI encourages the Commission to adopt deference to states in the cross-subsidy context, unless a state or holding company asks the Commission to apply uniform rules to avoid inconsistent standards that would trap legitimate costs. EEI suggests that the Commission adopt a procedure similar to the one it adopted in Order No. 667, in which a holding company system can apply to the Commission to impose consistent requirements that would eliminate the possibility of trapped costs. National Grid contends that inconsistencies between federal and state rules make implementation of both sets of rules impossible, particularly with respect to the day-to-day press of business within a utility holding company. It argues that deference to the states would minimize disruption of existing holding company accounting and reporting systems, cost-allocation manuals, and interaffiliate-transaction procedures built around state regulation. Pinnacle West states that, because state regulations typically address affiliate transactions, the Commission's regulations could upset states' efforts to ring fence utilities.

b. *Commission Determination*

69. The Commission will adopt the pricing restrictions on transactions for non-power goods and services proposed in the Affiliate Transactions NOPR, with the exception of a modification to the restriction applicable to transactions with centralized service companies, to conform those restrictions to the language in our Order No. 667 regulations. These are explained below.

70. First, as proposed, a franchised public utility with captive customers that provides non-power goods and services to a market-regulated power sales affiliate or a non-utility affiliate will be required to sell at a price that is the higher of cost or market price. We will not adopt an at-cost pricing structure for these types of non-power transactions (as suggested by National Grid, EEI, NiSource, Entergy and PG&E) because it would require a franchised public utility to sell to an affiliate at cost even when market prices are higher, thereby foregoing profits that the utility otherwise could have obtained by selling to a non-affiliate at a market price. In such a scenario, the benefit would go to the market-regulated affiliate or non-utility affiliate who receives a good or service at a below-market price. We believe the benefits that captive customers will receive under this ''higher of cost or market price'' standard outweigh any savings that may (or may not) occur through the use of a uniform at-cost standard.

71. Next, we will adopt the proposal in the Affiliate Transactions NOPR to prohibit a franchised public utility with captive customers from purchasing non-power goods or services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market price (with the exception of transactions from centralized service companies, which are discussed below). In doing so, we deny the New York Commission's request for a ''lower of cost or market'' standard for these types of transactions. As discussed above, the New York Commission argued that the ''at a price above market price'' standard would allow holding companies to structure affiliate transactions so that captive customers would pay above-cost charges. But captive customers are not harmed by the franchised public utility paying above-cost charges if those charges are no higher than what they would pay non-affiliates for the same non-power goods and services. Moreover, nothing in the standard requiring that these purchases not be above market prevents the franchised public utility from paying less than the market price. The New York Commission, or any other state commission, can require a stricter standard for these transactions so long as the standards do not result in trapped costs in situations involving multi-state holding companies. If the state commission's pricing standards for a franchised public utility's purchases from an affiliate are stricter than the Commission's (e.g., the state standard is lower of cost or market as opposed to market), then the stricter pricing standard would apply, as long as there is no conflict in complying with both the state's pricing standard and this Commission's pricing standard.[60]

72. Finally, with regard to centralized service companies, the Affiliate Transactions NOPR proposed that a franchised public utility with captive customers should be prohibited from purchasing or receiving non-power goods and services from a centralized service company at a price above cost. We will conform this standard to the language in Order No. 667, which is to require that such transactions occur ''at cost.'' While this is a change from the

[60] *See* 18 CFR 366.5.

Affiliate Transactions NOPR, which proposed to prohibit such sales from centralized service companies at a price above cost, our intent in the Affiliate Transactions NOPR was to be consistent with Order No. 667,[61] as well as the SEC's at-cost standard used prior to the repeal of PUHCA 1935. As we have previously stated, the at-cost pricing standard for transactions for non-power goods and services from centralized service companies to franchised public utilities with captive customers benefits ratepayers through economies of scale, and eliminates the speculative task of defining a market price in these instances.[62]

73. We recognize that one of the risks of at-cost pricing is the potential for prices to be imposed that are substantially higher than the market price. As we stated in Order No. 667, the Commission will entertain complaints that at-cost pricing exceeds the market price. Complainants would continue to have the burden of demonstrating the at-cost price exceeded market price and, furthermore, any change in the price as a result of the complaint would be prospective.

74. With regard to comments that the Commission's affiliate-pricing standards may conflict with similar pricing rules at the state level, we are not convinced that the Commission should establish a general policy of deference to existing state rules. For many years, we have required restrictions on certain affiliate transactions for non-power goods and services in the context of both market-base rate authorizations and merger approval under section 203.[63] As stated above, to the extent a state has affiliate-pricing standards that are ''stricter'' than the Commission's then the stricter standard applies, as long as there is no conflict in complying with both the state's pricing standard and this Commission's pricing standard.

3. Reporting Requirements

75. In the Affiliate Transactions NOPR, the Commission asked whether it should adopt any after-the-fact reporting requirements for transactions covered by the proposed regulations.

a. *Comments*

76. Most commenters, including EEI, Entergy, PG&E, Pinnacle West and Sempra, argue that the Commission should not require after-the-fact reporting requirements.

77. EEI argues that such reporting would be onerous given the number of transactions at issue, the fact that further reporting could include sensitive information and the Commission already collects large volumes of information from utilities and service companies. EEI also argues that if the Commission does adopt these regulations, it should clarify that utilities no longer need to include language that duplicates the regulations in their code of conduct as part of their individual tariffs.

78. Pinnacle West and Sempra argue that additional reporting is not required because many states already require reporting of affiliate transactions (including the states in which they conduct business) and the Commission already collects affiliate power sales information through EQRs and market-based rate requirements. Sempra states that it does not object to additional reporting requirements provided that the entities subject to the requirements are authorized to submit the same information in the same format and in the same time period as is required under existing state requirements.

79. PG&E encourages the Commission not to require additional reporting requirements for single-state holding companies. PG&E argues that such a requirement would be extraordinarily onerous. PG&E also argues that such a requirement would be duplicative because of Commission reporting requirements (EQRs and Form No. 3–Qs) and state requirements (where there is adequate state regulation of cross-subsidy issues).

80. APPA/NRECA and the state commissions support after-the-fact reporting requirements. APPA/NRECA ask that the Commission adopt additional after-the-fact reporting requirements. APPA/NRECA state that the Commission should require the filing of affiliate agreements governing non-power goods and services and the filing of periodic reports of all affiliate transactions within holding company systems regardless of whether they involve a centralized service company, a single-purpose service company, a market-regulated power sales affiliate or a non-utility affiliate. APPA/NRECA assert that there is no question of the Commission's statutory authority to require such reporting (citing the Commission's analysis in Order No. 667). APPA/NRECA also note that, in Order No. 667, the Commission only requires traditional, centralized service companies in holding company systems to file annual reports containing certain information relating to affiliate transactions, but the Commission does not require any reporting for single-purpose service companies or other associate companies in holding company systems. While APPA/NRECA acknowledge that a one-size-fits-all reporting scheme may not be appropriate, they believe additional reporting is required. As a suggestion, they offer that the Commission require each covered public utility to file a one-time compliance filing which would inform the Commission of its then-existing affiliate relationships and any exemptions from annual reporting requirements. APPA/NRECA admit that that sort of reporting regime is general, and ask that the Commission consider a further technical conference on this question.

81. The Oklahoma Commission also recommends after-the-fact reporting, noting that its rules regarding affiliate information have been effective. The Oklahoma Commission suggests that the Commission allow state commissions the opportunity to review and comment on any post occurrence reporting (suggesting a 90-day review and comment period).

82. The New York Commission also recommends reporting on affiliate transactions. The New York Commission recommends revisions to Form No. 1 and Form No. 2 to require utilities to describe, quantify, and provide the basis used to record each type of transaction with its affiliates. It argues that these reporting requirements are similar to those the Commission included in Form No. 60 for centralized service companies.

b. *Commission Determination*

83. We believe that the current reporting regulations are adequate to ensure compliance with the proposed restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities and their market-regulated power sales affiliates or non-utility affiliates. In addition to the information gathered through Form No. 1, the Commission already collects affiliate power sales information from franchised public utilities through EQRs and market-based requirements. With regard to non-power goods and services, franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities are covered by the existing record retention requirements in Parts 125 and 225 of the Commission's regulations. Accordingly, there is no need to impose additional reporting requirements to ensure compliance with the proposed regulations. However, if

[61] Order No. 667, FERC Stats. & Regs. ¶ 31,197 at P 169.

[62] *Id.*

[63] *See, e.g., Potomac,* 93 FERC at 61,782; *Heartland,* 68 FERC at 62,062–63; *PSC Colorado,* 75 FERC at 62,046.

the Commission finds that the existing requirements are inadequate, we will consider holding a technical conference to discuss what additional reporting requirements may be warranted.

4. Effective Date

a. *Comments*

84. EEI and Entergy recommend that the application of any adopted regulations be prospective in nature and not affect any existing contracts. In its comments, EEI asserts that it would be ''unjust and detrimental to the financial integrity'' of holding companies for the Commission to retroactively void pricing arrangements to provide energy or non-power goods and services.[64]

b. *Commission Determination*

85. In response to EEI's request for clarification, we clarify that the pricing rules adopted herein are prospective and will apply to any contracts, agreements or arrangements entered into on or after the effective date of this Final Rule. To the extent different pricing was in effect for any contract, agreement or arrangement entered into prior to the effective date of this Final Rule, such pricing may remain in effect; however, the Commission on its own motion, or upon complaint, may on a case-by-case basis institute a section 206 proceeding to determine whether the costs incurred by a public utility under such pre-existing contracts, agreements or arrangements are just, reasonable and not unduly discriminatory or preferential. We also note that many public utilities already have the same pricing restrictions in effect as a result of Commission orders approving mergers or market-based rates; these restrictions remain in place.

V. Information Collection Statement

86. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule.[65] This Final Rule does not impose any additional information collection requirements. Therefore, the information collection regulations do not apply to this Final Rule. The Commission received 12 comments on the Affiliate Transactions NOPR and no entity specifically addressed the Commission's information collection statement. The Commission will submit for informational purposes only a copy of this rulemaking to OMB.

VI. Environmental Analysis

87. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[66] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[67] The final rule is categorically excluded as it addresses rate filings submitted under sections 205 and 206 of the FPA.[68] Accordingly, no environmental assessment is necessary and none has been prepared in this final rule.

VII. Regulatory Flexibility Act

88. The Regulatory Flexibility Act of 1980 (RFA)[69] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[70] Agencies are not required to make such an analysis if a rule would not have such an effect.

89. The Final Rule is applicable to franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities. Most such companies regulated by the Commission do not fall within the RFA's definition of small entity.[71] Therefore, the Commission certifies the Final Rule will not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis is required.

VIII. Document Availability

90. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

91. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

92. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

IX. Effective Date and Congressional Notification

93. These regulations are effective March 31, 2008. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Kimberly D. Bose,

Secretary.

■ In consideration of the foregoing, the Commission amends part 35, Chapter I, Title 18, *Code of Federal Regulations*, to read as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Subpart I is added to read as follows:

Subpart I—Cross-Subsidization Restrictions on Affiliate Transactions

Sec.

35.43 Generally.

35.44 Protections against affiliate cross-subsidization.

[64] EEI Comments at 13.

[65] 5 CFR 1320.12.

[66] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[67] 18 CFR 380.4.

[68] *See* 18 CFR 380.4(a)(15).

[69] 5 U.S.C. 601–12.

[70] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small business concern'' as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh. 13 CFR 121.201.

[71] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small-business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

§ 35.43 Generally.

(a) For purposes of this subpart:

(1) *Affiliate* of a specified company means:

(i) For any person other than an exempt wholesale generator:

(A) Any person that directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of the specified company;

(B) Any company 10 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company;

(C) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate; and

(D) Any person that is under common control with the specified company.

(E) For purposes of paragraph (a)(1)(i) of this section, owning, controlling or holding with power to vote, less than 10 percent of the outstanding voting securities of a specified company creates a rebuttable presumption of lack of control.

(ii) For any exempt wholesale generator (as defined under § 366.1 of this chapter), consistent with section 214 of the Federal Power Act (16 U.S.C. 824m), which provides that ''affiliate'' will have the same meaning as provided in section 2(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(11)):

(A) Any person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the specified company;

(B) Any company 5 percent or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by the specified company;

(C) Any individual who is an officer or director of the specified company, or of any company which is an affiliate thereof under paragraph (a)(1)(ii)(A) of this section; and

(D) Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate.

(2) *Captive customers* means any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation.

(3) *Franchised public utility* means a public utility with a franchised service obligation under state law.

(4) *Market-regulated power sales affiliate* means any power seller affiliate other than a franchised public utility, including a power marketer, exempt wholesale generator, qualifying facility or other power seller affiliate, whose power sales are regulated in whole or in part on a market-rate basis.

(5) *Non-utility affiliate* means any affiliate that is not in the power sales or transmission business, other than a local gas distribution company or an interstate natural gas pipeline.

(b) The provisions of this subpart apply to all franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities.

§ 35.44 Protections against affiliate cross-subsidization.

(a) *Restriction on affiliate sales of electric energy.* No wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the Federal Power Act.

(b) *Non-power goods or services.*

(1) Unless otherwise permitted by Commission rule or order, sales of any non-power goods or services by a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, including sales made to or through its affiliated exempt wholesale generators or qualifying facilities, to a market-regulated power sales affiliate or non-utility affiliate must be at the higher of cost or market price.

(2) Unless otherwise permitted by Commission rule or order, and except as permitted by paragraph (b)(3) of this section, a franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may not purchase or receive non-power goods and services from a market-regulated power sales affiliate or a non-utility affiliate at a price above market.

(3) A franchised public utility that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, may only purchase or receive non-power goods and services from a centralized service company at cost.

[FR Doc. E8–3820 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

New Animal Drugs; Albendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for use of albendazole oral suspension in nonlactating goats for the treatment of liver flukes.

DATES: This rule is effective February 29, 2008.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8342, e-mail: *joan.gotthardt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 110–048 that provides for the use of VALBAZEN (albendazole) Oral Suspension for the treatment of liver flukes in nonlactating goats. The approval of this supplemental NADA relied on publicly available safety and effectiveness data contained in Public Master File (PMF) 5582, which were compiled under National Research Support Project-7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses. The supplemental NADA is approved as of January 24, 2008, and the regulations are amended in 21 CFR 520.45a and 556.34 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of the safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 573(c) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C.360ccc–2(c)), this approval qualifies for 7 years of exclusive marketing rights beginning on the date of approval, because the new animal drug has been declared a designated drug by FDA under section 573(a) of the Act.

The agency has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Revise § 520.45a to read as follows:

§ 520.45a Albendazole suspension.

(a) *Specifications.* Each milliliter of suspension contains 45.5 milligrams (mg) (4.55 percent) or 113.6 mg (11.36 percent) albendazole.

(b) *Sponsor.* See No. 000069 in § 510.600 of this chapter.

(c) *Related tolerances.* See § 556.34 of this chapter.

(d) *Special considerations.* See § 500.25 of this chapter.

(e) *Conditions of use*—(1) *Cattle.* Administer 11.36 percent suspension:

(i) *Amount.* 4.54 mg/pound (lb) body weight (10 mg/kilogram (kg)) as a single oral dose using dosing gun or dosing syringe.

(ii) *Indications for use.* For removal and control of adult liver flukes (*Fasciola hepatica*); heads and segments of tapeworms (*Moniezia benedeni* and *M. expansa*); adult and 4th stage larvae of stomach worms (brown stomach worms including 4th stage inhibited larvae (*Ostertagia ostertagi*), barberpole worm (*Haemonchus contortus* and *H. placei*), small stomach worm (*Trichostrongylus axei*)); adult and 4th stage larvae of intestinal worms (thread-necked intestinal worm (*Nematodirus spathiger* and *N. helvetianus*), small intestinal worm (*Cooperia punctata* and *C. oncophora*)); adult stages of intestinal worms (hookworm (*Bunostomum phlebotomum*), bankrupt worm (*Trichostrongylus colubriformis*), nodular worm (*Oesophagostomum radiatum*)); adult and 4th stage larvae of lungworms (*Dictyocaulus viviparus*).

(iii) *Limitations.* Do not slaughter within 27 days of last treatment. Do not use in female dairy cattle of breeding age: Do not administer to female cattle during first 45 days of pregnancy or for 45 days after removal of bulls.

(2) *Sheep.* Administer 4.45 or 11.36 percent suspension:

(i) *Amount.* 3.4 mg/lb body weight (7.5 mg/kg) as a single oral dose using dosing gun or dosing syringe.

(ii) *Indications for use.* For removal and control of adult liver flukes (*Fasciola hepatica* and *Fascioloides magna*); heads and segments of common tapeworms (*Moniezia expansa*) and fringed tapeworm (*Thysanosoma actinioides*); adult and fourth stage larvae of stomach worms (brown stomach worm (*Ostertagia circumcinta* and *Marshallagia marshalli*), barberpole worm (*Haemonchus contortus*), small stomach worm (*Trichostrongylus axei*)); adult and fourth stage larvae of intestinal worms (thread-necked intestinal worm (*Nematodirus spathiger* and *N. filicollis*), Cooper's worm (*Cooperia oncophora*), bankrupt worm (*Trichostrongylus colubriformis*), nodular worm (*Oesophagostomum columbianum*), and large-mouth bowel worm (*Chabertia ovina*)); adult and larval stages of lungworms (*Dictyocaulus filaria*).

(iii) *Limitations.* Do not slaughter within 7 days of last treatment. Do not administer to ewes during first 30 days of pregnancy or for 30 days after removal of rams.

(3) *Goats.* Administer 11.36 percent suspension:

(i) *Amount.* 4.54 mg/lb body weight (10 mg/kg) as a single oral dose using dosing gun or dosing syringe.

(ii) *Indications for use.* For the treatment of adult liver flukes (*Fasciola hepatica*) in nonlactating goats.

(iii) *Limitations.* Do not slaughter within 7 days of last treatment. Do not administer to does during the first 30 days of pregnancy or for 30 days after removal of bucks.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 4. In § 556.34, revise paragraph (b) and add paragraph (c) to read as follows:

§ 556.34 Albendazole.

* * * * *

(b) *Tolerances.* The tolerances for albendazole 2-aminosulfone (marker residue) are:

(1) *Cattle*—(i) *Liver (target tissue)*: 0.2 parts per million (ppm).

(ii) *Muscle*: 0.05 ppm.

(2) *Sheep*—(i) *Liver (target tissue)*: 0.25 ppm.

(ii) *Muscle*: 0.05 ppm.

(3) *Goat*—(i) *Liver (target tissue*): 0.25 ppm.

(ii) [Reserved]

(c) *Related conditions of use.* See § 520.45 of this chapter.

Dated: February 19, 2008.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E8–3877 Filed 2–28–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice: 6114]

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

AGENCY: Department of State.

ACTION: Final Rule.

SUMMARY: This rule revises the procedure for notifying the beneficiary of an immigrant visa petition of the termination of the immigrant visa registration because of the failure of the beneficiary to pursue the application within a specified time, by providing that such notification will be made by National Visa Center directly to the beneficiary.

DATES: This rule is effective February 29, 2008.

FOR FURTHER INFORMATION CONTACT: Charles Robertson, Legislation and Regulations Division, Visa Services, Department of State, 2401 E Street, NW., Room L–603D, Washington, DC 20520–0106, (202) 663–1202, e-mail (*robertsonce@state.gov*).

SUPPLEMENTARY INFORMATION:

Why is the Department promulgating this rule?

In the past, the consular officer at the post where an alien was registered as a beneficiary of an immigrant visa petition was responsible for notifying the alien of the termination of the immigrant visa registration if the alien failed to pursue the application within one year after being notified that a visa was available. The consular officer based this notification on information received from the National Visa Center (NVC). Now, the NVC will make this notification directly to the alien.

How does this change affect the alien?

There is no change from the point of view of the alien. The alien still has the ability to apply for reinstatement of the immigrant visa registration. Such application should be sent to the National Visa Center and it will be forwarded to the consular officer at the post where the alien was registered, under the same conditions as before.

Regulatory Findings

Administrative Procedure Act

This regulation involves a foreign affairs function of the United States and, therefore, in accordance with 5 U.S.C. 553(a)(1), is not subject to the rule making procedures set forth at 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

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

The Unfunded Mandates Reform Act of 1995

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

The Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Department of State has reviewed this final rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866 and has determined that the benefits of the final regulation justify its costs. The Department does not consider the final rule to be an economically significant action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities.

Executive Orders 12372 and 13132: Federalism

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

Paperwork Reduction Act

This rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

List of Subjects in 22 CFR Part 42

Aliens, Foreign officials, Immigration, Passports and Visas.

■ Accordingly, for the reasons stated in the preamble, Title 22 Part 42 is amended as follows:

PART 42—[AMENDED]

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801. Additional authority is derived from Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. 104–208, 110 Stat. 3546.

■ 2. Revise § 42.83(c) to read as follows:

§ 42.83 Termination of registration.

* * * * *

(c) *Notice of termination.* Upon the termination of registration under paragraph (a) of this section, the National Visa Center (NVC) shall notify the alien of the termination. The NVC shall also inform the alien of the right to have the registration reinstated if the alien, before the end of the second year after the missed appointment date if paragraph (a) applies, establishes to the satisfaction of the consular officer at the post where the alien is registered that the failure to apply for an immigrant visa was due to circumstances beyond the alien's control. If paragraph (b) applies, the consular officer at the post where the alien is registered shall, upon the termination of registration, notify the alien of the termination and the right to have the registration reinstated if the alien, before the end of the second year after the INA 221(g) refusal, establishes to the satisfaction of the consular officer at such post that the failure to present evidence purporting to overcome the ineligibility under INA 221(g) was due to circumstances beyond the alien's control.

* * * * *

Dated: February 20, 2008.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E8–3941 Filed 2–28–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 171

RIN 1076–AD44

Irrigation Operation and Maintenance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior, Bureau of Indian Affairs (BIA) is revising the regulation governing irrigation projects under its jurisdiction.

The purpose of the revision is to provide consistent administration; establish the process for updating practices, policies, and procedures for the administration, operation, maintenance, and rehabilitation of irrigation projects; and provide uniform accounting and recordkeeping procedures.

This regulation has also been rewritten in plain English as mandated by Executive Order 12866. It also addresses several issues that the prior regulation did not cover.

DATES: Effective March 31, 2008.

FOR FURTHER INFORMATION CONTACT: John Anevski, Chief, Division of Irrigation, Power and Safety of Dams, Office of Trust Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 4655–MIB, Washington, DC 20240; Telephone (202) 208–5480.

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Subpart-by-Subpart Analysis
IV. Procedural Requirements

I. Background

This regulation is issued under the Secretary of the Department of the Interior's (Secretary) authority to administer Indian irrigation projects under 25 United States Code (U.S.C.) 381 *et seq.* This revised regulation clarifies prior regulatory language, in keeping with the ''plain English'' standard required by Executive Order 12866. In revising this regulation, redundant or unnecessary sections of the existing part 171 of Title 25 of the Code of Federal Regulations (CFR) were identified and deleted. New sections were also added to comply with the Inspector General's (IG) audit findings and to implement the provisions of the Debt Collection Improvement Act of 1996. For example, several IG audits, the most recent in 1996 (96–I–641), identified a management deficiency concerning full cost rates for operation and maintenance. Also, the Debt Collection Improvement Act established new procedures to manage moneys owed the Federal Government. This regulation addresses both of these issues.

The proposed revisions to 25 CFR part 171 were first published on July 5, 1996 (61 FR 35167). Based on the length of time that has passed and changes to the earlier proposed regulation, these proposed revisions were published for public comment on July 17, 2006 (71 FR 40450) with a 120-day public comment period that ended on November 14, 2006. The re-publication provided a fresh start to the rulemaking process for this revision. Consultation meetings with the Indian tribes (Tribes) that may be impacted by this regulation were held on August 24 and 26, 2004, and May 10 and 12, 2005. These consultation meetings were held in accordance with Executive Order 13175. No additional consultation meetings with Tribes were requested or held during the public comment period.

II. Response to Comments

The Department solicited comments from all interested parties through its publication of the proposed regulation in the **Federal Register** on July 17, 2006 (71 FR 40450). In addition, prior to publication of the proposed regulation, the BIA held four tribal consultation meetings with affected Tribes on August 24 and 26, 2004, and May 10 and 12, 2005. These meetings were well-attended and the BIA received valuable input to help develop the proposed regulation as a result. Transcripts from those consultations were used in the development of the proposed regulation.

The Department received written comments from one individual and three tribes. The comments included both general and specific criticisms and suggestions. The comments were carefully reviewed by the regulation drafting team made up of BIA employees from Central Office and attorneys from the Office of the Solicitor. Depending on their merit, the Department accepted, accepted with revision, or rejected comments made on each part of the regulation. Some of the comments included copies of previously submitted comments which were related to earlier versions of the proposed regulation. Because the 2006 proposed regulation was significantly different from earlier versions, those earlier comments are not specifically addressed here; however, those earlier comments were carefully considered in developing the latest version of the regulation. As noted in the part-by-part analysis below, certain sections of the regulation have been clarified in direct response to comments. Additionally, some language has been deleted or added to provide for increased clarity and precision. Substantive comments are summarized below.

III. Subpart-by-Subpart Analysis

25 CFR Part 171—Irrigation Operation and Maintenance (O&M)

The purpose of this regulation is to provide consistent administration of irrigation projects under the jurisdiction of the BIA; establish uniform accounting and recordkeeping procedures for the assessment of irrigation O&M charges; and establish the process for updating practices, policies, and procedures for the administration, operation, maintenance, and rehabilitation of Indian irrigation projects.

The various subparts of part 171 address the applicability of the regulation to individual irrigators; definition of relevant terms; the nature and scope of the irrigation service provided by the BIA; allowable uses of irrigation water; the responsibilities of irrigators and the BIA; assessments, billing, and collections; record-keeping and agreements between BIA and irrigators; and non-assessment status of lands within an irrigation project.

General Comments

Comment: Adequacy of Consultation

Several commenters expressed concern that there was not adequate formal consultation on the proposed regulation. Formal consultations were held on August 24, 2004 and May 12, 2005 in Phoenix, AZ and on August 26, 2004 and May 10, 2005 in Billings, MT. All affected Tribes were invited to attend each of the four formal consultation meetings, and all of the meetings were well-attended. The BIA indicated its willingness to host consultations for individual affected Tribes or additional consultations with groups of Tribes upon request. None of the affected Tribes requested additional consultation meetings. Two of the commenters stated that the Walker River Paiute Tribe was not notified of the consultation meetings and thus could not participate. However, BIA records indicate that the Walker River Paiute Tribe was notified of all four formal consultations meetings, and in fact, three representatives from the Walker River Paiute Tribe attended the May 12, 2005 consultation meeting held in Phoenix, AZ. One commenter noted that a water user meeting held on her reservation two months after publication of the proposed rule did not constitute adequate formal consultation. The meeting this commenter referred to was held on the Walker River Paiute Reservation on September 28, 2006. The purpose of water user meetings is for the local BIA irrigation project to consult with the project stakeholders on project-specific operations, maintenance, budget, rates, and related matters. This meeting was not held for the purpose of consulting with Tribes on the proposed revision to Part 171. One commenter noted that the consultations did not address project-specific operating guidelines and were therefore inadequate. Consultations were held for this proposed regulation. The

establishment of operating guidelines specific to the individual irrigation projects is distinct from this rule-making process. The BIA will be consulting with Tribes and water users in the development of individual project operating guidelines. No change was made to the regulation to address these comments.

Comment: Timing of Issuance of Final Regulation

One commenter stated that the regulation should not be finalized until after the BIA proposes and discusses new project-specific operating guidelines. The commenter stated that studies should be undertaken to determine how the regulation will affect the BIA's ability to protect and manage Indian land and water. The establishment of project-specific operating guidelines is distinct from this rule-making process. This regulation will guide the development of the project-specific guidelines, not the other way around. The regulation will not affect the BIA's ability to protect and manage Indian land and water. These regulations are intended to enhance our ability to protect, manage, and operate irrigation projects by providing new mechanisms for projects to begin addressing long-standing irrigation issues. Additionally, the project-specific operating guidelines are intended to provide additional and more specific guidance for individual projects within the overarching regulations. Thus, it is necessary to finalize this proposed regulation first before developing the more detailed, project-specific operating guidelines. In response to the comment suggesting that BIA study the impact of these regulations prior to finalizing the rule, BIA's irrigation program and the existing proposed regulation have already been the subject of numerous studies, including General Accounting Office (GAO) reports and IG audits. The overall impact of the revisions to the regulation are relatively minor. Redundant or unnecessary sections were deleted. New sections were added to comply with the Debt Collection Improvement Act, better define what items should be included in project budgets for better rate setting, improve lands within the irrigation projects by using incentive agreements, and grant Annual Assessment Waivers when BIA cannot deliver water to farm units. No change was made to the regulation to address these comments.

One commenter noted that the Yakama Nation has a pending lawsuit in federal district court against the United States that questions the scope of BIA's authority to assess irrigation O&M charges. The commenter urged the BIA to delay issuance of the regulation until that litigation is decided. The litigation referenced—Confederated Tribes and Bands of the Yakama Nation v. United States, No. CV–06–3032–LRS (E.D. Wash.)—was dismissed on procedural grounds in December 2006. The Yakama Nation's request for reconsideration was denied in February 2007. The Yakama Nation has served notice of appeal to the Ninth Circuit Court of Appeals purely on the procedural issues, and briefs were filed during the summer of 2007. If the courts were ever to address the substantive issues raised in the litigation it could be years until a judicial resolution would be obtained. Thus, the BIA does not believe it would be prudent to delay issuance of the regulation on that basis.

Comments: Plain English

Some commenters stated that the change to ''plain English'' oversimplified technical concepts and made the regulation vague and less precise, and therefore more difficult to understand, than the existing Part 171. While some commenters stated the regulation is too simple, other commenters asserted that the regulation was too complex and used too much ''bureaucratic jargon.'' The proposed rule was written in ''plain English'' to comply with Executive Order 12866. Every attempt was made to make the regulation clear and easy to read, while not oversimplifying technical issues. The commenters did not provide any alternate language or suggestions for making this rule easier to understand. No change was made to the regulation to address these comments.

Comments: Small Business Regulatory Enforcement Fairness Act (SBREFA)

Several commenters expressed concern about the statement in the proposed regulation regarding the Small Business Regulatory Enforcement Fairness Act (SBREFA) and the potential for rate increases. The BIA stated that this regulation will not have an annual effect on the economy of $100 million or more. Although Indian irrigation projects are significant components of reservation economy, this regulation will not significantly change the economy, productivity, or investment opportunities of State, local, or tribal governments or communities on the affected reservations. Nor will this regulation cause a major increase in costs or prices for consumers, individual industries, or governments. This regulation does not increase irrigation O&M assessment rates, and this regulation is not expected to result in major increases in rates in the near future. However, there is a potential that this regulation could result in appreciable rate increases in the long-term. This regulation makes no change to the present method of establishing rates for irrigation projects. The regulation more clearly states the process the BIA has always used to calculate rates. The underlying statutory authority to charge irrigation O&M assessments remains unchanged under the regulation. No change was made to the regulation to address these comments.

Comments: BIA Authority To Assess Irrigation O&M Charges

Several of the commenters questioned the scope of the BIA's authority to charge irrigation O&M assessments. The comments came in various forms, some more general in nature and others more specific to other parts of the regulation, particularly subpart E—Financial Matters, Billing, and Collections. General and cross-cutting comments are addressed here, while more specific comments are addressed below under the appropriate headings.

One commenter seemed to believe that the regulation created new authority for the BIA to fully recover its O&M costs for Indian irrigation projects in a way that it previously could not. Under 25 U.S.C. 381 *et seq.*, the BIA is authorized to recover the full cost of operation and maintenance of its irrigation facilities. This underlying statutory authority to assess irrigation O&M charges remains unchanged under the proposed regulation. No change was made to the regulation to address these comments.

Two commenters read 25 U.S.C. 385 and the statutes it codifies to impose a requirement that the BIA first determine an individual's ability to pay irrigation O&M charges before setting rates and assessing charges. One of the commenters also suggested that the parcel of land on which the assessment is based must also have the ability to produce adequate income to pay irrigation O&M assessments. These comments misconstrue the Act of August 14, 1914 and 25 U.S.C. 385. The Secretary's authority to set O&M charges and collect irrigation assessments is not subject to a determination of an individual's ability to pay or the ability of a particular parcel of land to produce adequate income. The ability to pay language in both the 1914 Act and 25 U.S.C. 385 refers only to repayment of construction costs. No change was made to the regulation to address these comments.

Comments: Trust Responsibility

All of the commenters addressed the United States' trust responsibility to Indian tribes to some degree. Some questioned whether the regulation undermined the trust responsibility in any way, while others asserted a need for the regulation to expressly incorporate more safeguards to protect trust resources. Nothing in this regulation alters the BIA's responsibility regarding irrigation projects and related resources. Instead, this regulation addresses how the BIA administers its irrigation projects. Some commenters also asserted that there is a trust responsibility to provide irrigation service, and one commenter felt that such a trust responsibility required the BIA to charge Indian farmers a different (lower) rate than non-Indian farmers. The BIA does not have a trust obligation to operate and maintain its irrigation projects. See, e.g., *Grey* v. *United States*, 21 Cl. Ct. 285 (1990), aff'd, 935 F.2d 281 (Fed. Cir. 1991), cert. denied, 502 U.S. 1057 (1992). No change was made to the regulation to address these comments.

Comment: Protection of Trust Resources

One commenter stated that the regulation must incorporate safeguards to protect trust resources. 25 CFR 171.110 describes how the BIA will administer its irrigation facilities. Protection of trust resources is addressed by other statutes or regulations specific to the resource at issue. No change was made to the regulation to address these comments.

Comment: Impacts on the Flathead Indian Irrigation Project Turnover

One commenter expressed concern that the regulation could impact the transfer of operations and management of the Flathead Indian Irrigation Project. This regulation will have no impact on the transfer process, which is being undertaken pursuant to specific statutory authority. The terms and conditions of the transfer, which are currently being negotiated and developed, will address how the Flathead Indian Irrigation Project will be operated and managed after transfer. After transfer, this regulation will no longer apply to the Flathead Indian Irrigation Project because it will no longer be operated by the BIA. No change was made to the regulation to address these comments.

Comment: Impacts on Other Department Bureaus and Offices

One commenter stated that the regulation has the potential to impact the operation of the Bureau of Reclamation's Yakima Project. The Bureau of Reclamation has reviewed this regulation. Changes to the BIA irrigation regulation will have no impact on the Yakima Project. No change was made to the regulation to address these comments.

Comment: Indian Lands in Probate

One commenter recommended that the regulation include an O&M assessment exemption for Indian lands in probate. There is currently a process in place to resolve assessment of O&M on lands in probate outside the scope of this regulation. The process is covered in 25 CFR Part 15, Probate of Indian Estates, and the BIA Irrigation Handbook, Section 12.3.7 Estates/Probates. No change was made to the regulation to address these comments.

Comment: Idle Lands on the Yakama Reservation

One commenter stated that the regulation must study how the proposed regulation would help alleviate the idle lands problem on the Yakama Reservation. The overall idle agricultural lands issue is a function of the BIA's Real Estate Services program. The regulation at 25 CFR 171.610 provides an avenue by which the BIA, at the project level, may provide incentives to help alleviate some of the idle lands issues. Furthermore, the BIA looks forward to working with Tribes to explore the various options available for addressing the longstanding idle lands issue, such as through the individual project operating guidelines. No change was made to the regulation to address this comment.

Subpart A—General Provisions

One comment asked that the BIA retain 25 CFR 171.1(b) from the existing version of 25 CFR part 171, which provided authority for the Officer-in-Charge to waive portions of the regulations, particularly for small subsistence units and gardens. This provision was removed in order to avoid conflicts with Departmental Delegations of Authority and to provide consistent application of regulations across all irrigation projects. No change was made to the regulation to address these comments.

Three commenters had various suggestions, questions, or concerns with some of the definitions in Section 171.100. Those comments are addressed in the following paragraphs.

With regard to the definition of the *annual assessment waiver* and *carriage agreement*, one commenter stated that there was no reference to statutory authority for waiving annual O&M assessments or for *carriage agreements*. In the ''authority'' portion of the regulation, located just above Subpart A in the **Federal Register** notice, the authorities for all components of the regulation are listed. 25 U.S.C. 381 *et seq*. provide statutory authority for an *annual assessment waiver* and for *carriage agreements*. No change was made to the regulation to address these comments.

One commenter asked whether Tribes will have any input into the determination of *farm unit* size, and another commenter asked where the BIA's definition of a *farm unit* is. Additionally, one commenter stated that the regulation fails to state what happens if a *farm unit* is subdivided. If the *farm unit* size is not defined in a project's authorizing legislation, it will be defined in the project-specific operating guidelines, and the BIA will be consulting with Tribes and water users in the development of these operating guidelines. With regard to subdivision of *farm units*, 25 CFR 171.225 describes what must be done to receive irrigation service to a subdivided *farm unit*. No change was made to the regulation to address these comments.

One commenter stated that an *incentive agreement* should allow for irrigation water delivery at no or reduced O&M cost for the period of time required to realize the full agricultural potential of the previously idle parcel. The commenter also added that he believed that BIA lacked authority to assess O&M if the parcel is not producing adequate funds to pay O&M. 25 CFR 171.610(a)(4) allows for the delivery of water under an incentive agreement, the terms of which would be described in the agreement. As discussed above, the law does not require the BIA to determine or consider either an individual's ability to pay or the economic viability of the irrigated parcel when setting irrigation O&M assessment rates. No change was made to the regulation to address these comments.

One commenter stated that the definition of *incentive agreement* should include a reference to the statutory authority for the concept. In the ''authority'' portion of the regulation, located just above Subpart A in the **Federal Register** notice, the authorities for all components of the regulation are listed. 25 U.S.C. 381 *et seq*. provide statutory authority for an *incentive agreement*. No change was made to the regulation to address these comments.

One commenter thought the definition of *incentive agreement* failed to adequately define ''improve idle

lands.'' In response to that comment, Section 171.610(a)(1) has been amended to include the language ''* * * other activities that will improve idle lands to a condition that supports authorized use of delivered water.''

One commenter stated that where neither tribal nor individual water rights have been quantified, there can be no such thing as a *supplemental water*. Given that issue, the commenter was concerned with the legality of the concept of *supplemental water*. If a water duty has not been established for an irrigation project, then supplemental water does not apply at that irrigation project. No change was made to the regulation to address these comments.

One commenter thought the definition of *total assessable acres* should include special provisions for how O&M charges are assessed on the Toppenish-Simcoe Unit of the Wapato Irrigation Project. The BIA has specifically addressed this issue with the Yakama Nation by letter of June 2, 2006, from Michael Olsen, Principal Deputy Assistant Secretary-Indian Affairs to Honorable Louis Cloud. The BIA intends to include in the revised Project Operations and Maintenance Guidelines a provision substantially similar to the current 25 CFR 171.19(a)(2). Furthermore, project-specific provisions were removed from the regulation as part of the effort to create a consistent set of rules applicable to all BIA irrigation projects. No change was made to the regulation to address these comments.

The definition of *wastewater* concerned one commenter. The commenter stated that the regulation should require water users to control return flows. In response to this comment, both the definition of *wastewater* and the regulation at Section 171.230 have been amended accordingly.

One commenter stated that the BIA must specifically list each document referenced in Section 171.110. Section 171.110 references a broad array of laws, regulations, and policy documents too numerous to list. Furthermore, many of these items would be specific to individual irrigation project and thus would be inappropriate to reference in a regulation of general applicability. The same commenter also noted that the regulation should state where such documents could be obtained. A listing, along with copies of the pertinent documents, will be made available in the National Irrigation Handbook and the O&M guidelines specific to individual projects. To address this comment, Section 171.110(a) has been amended to reflect that copies of the referenced items can be obtained from the irrigation project serving you.

Another commenter stated that his irrigation project is not safely or reliably operated or rehabilitated. The commenter asked when, under the proposed Section 171.110(a), his project would be rehabilitated. The physical state of the BIA's irrigation projects is directly related to BIA's historic inability to recover the full cost of operating and maintaining its irrigation projects. This regulation is intended to improve the BIA's cost recovery. No change was made to the regulation to address these comments.

One commenter stated that the consultation referenced in Section 171.110(b) is a mandatory trust responsibility and that consulting only when appropriate or when time allows is insufficient. Consultation with Indian tribes is a government-wide policy, not a trust responsibility per se. As stated in the proposed rule, the BIA will consult with the Tribes and the BIA agrees that consultation is possible and desirable. No change was made to the regulation to address these comments.

A number of commenters expressed concern about Section 171.125, which addresses appeals of the BIA's decisions on irrigation projects. The regulation as proposed was unclear and potentially in conflict with the 25 CFR Part 2. Section 171.125(b) has been amended to address these comments, provide clarity, and ensure consistency with the appeals process set forth in 25 CFR Part 2.

Subpart B—Irrigation Service

One commenter suggested that the regulation provide some authority to enable tiered O&M assessment rates on irrigation facilities to enable the projects to set rates based on quantity of water delivered to farm units. Rates for irrigation O&M are based on the cost of providing irrigation service, not on water quantity. Nothing in these proposed regulations prohibits individual projects from establishing various rates consistent with section 171.110. No change was made to the regulation to address these comments.

With regard to Section 171.230, one commenter stated that the BIA should pay for the cost of improvements on Indian lands to make drainage water collection systems adequate. Where adequate funds exist to improve irrigation infrastructure, the BIA will make improvements. No change was made to the regulation in response to this comment. However, Section 171.230 has been amended in response to comments regarding the definition of *wastewater* in Section 171.100.

Subpart C—Water Use

One commenter expressed concern that allowing the BIA to provide leaching service under Section 171.305 may not be a beneficial use under some water right decrees, tribal water codes, or water use statutes. The commenter expressed a similar concern with regard to the BIA's authority to deliver domestic water and stock water under Section 171.310. Another commenter stated that the BIA was required to deliver domestic and stock water to the Walker River Paiute Tribe pursuant to a court decree. This regulation takes into consideration water rights and related considerations under Section 171.205, which states that ''[t]he amount of water you receive will be based on your request, your legal entitlement to water, and the available water supply.'' Furthermore, Section 171.110 describes how BIA will administer its irrigation facilities, which is by enforcing the applicable statutes, regulations, water rights decrees, and similar legal requirements, which may mandate ''not'' delivering leaching water or permitting delivery of domestic or stock water in some cases. No change was made to the regulation to address these comments.

One commenter stated that Section 171.305(a)(3) is a departure from the status quo, contrary to practices necessary in some cases to rehabilitate idle land within an irrigation project, and inconsistent with the law. The regulation is not a departure from the status quo. Under former Section 171.17 and now under Sections 171.545 and 171.550, irrigation services are not provided until the annual O&M assessment is paid or there is an approved payment plan in place. The regulation accounts for rehabilitation of idle land. Section 171.610(a)(4) allows for the delivery of water under an incentive agreement, the terms of which could include delivery of water for the purposes of leaching without charge. Section 171.305(a)(3) is consistent with existing law. As discussed elsewhere in these responses to comments, the law does not require the BIA to determine or consider either an individual's ability to pay or the economic viability of the irrigated parcel when setting irrigation O&M assessment rates. The BIA has the authority to deny irrigation service if O&M charges are not paid. No change was made to the regulation to address these comments.

Subpart D—Irrigation Facilities

One commenter stated that the BIA had no legal authority for Section 171.400(b) because the BIA has a trust

responsibility to provide adequate irrigation infrastructure, including necessary private structures to allow access to irrigation water. The commenter added that, at the least, the BIA must engage in consultation before any structures are built. As noted above, the operation and maintenance of irrigation projects is not a trust responsibility. The BIA is committed to engaging in meaningful tribal consultation when appropriate. If the circumstances warrant tribal consultation, the BIA will consult with the affected tribe(s). No change was made to the regulation to address these comments.

One commenter objected to Section 171.400(c) to the extent it suggests that the BIA can bill tribal members for costs relating to trust or Indian-owned fee land within an irrigation project. Section 171.400, in its entirety, describes who is responsible for structures on a BIA irrigation project. Section 171.405 describes the process which an individual or group must go through to become responsible for an irrigation project structure ''which is under a written agreement between you and us.'' No change was made to the regulation to address these comments.

One commenter asked that Section 171.405 be removed. The commenter stated that authorizing individuals to take control of irrigation project structures could interfere with the property rights of individuals or tribes owning property underlying the irrigation project facilities and could lead to unequal treatment between water users on a project. The BIA disagrees. One commenter believed that Sections 171.405 and 171.410 contradicted Section 171.415 and, accordingly, suggested that the regulation should be revised to require the BIA to protect the irrigation facilities from encroachment. Section 171.405 provides that authorization to take control of a structure requires a written agreement with the BIA. Revocable encroachment permits do not transfer ownership. The requirement of a written agreement qualifies the ability of an individual to build or assume responsibility of a structure. Such written agreements will ensure that individual property rights are not infringed upon. The BIA has determined that there are no inconsistencies in these sections, especially when examined in concert with the definition of *obstruction* in Section 171.100. No change was made to the regulation to address these comments.

Subpart E—Financial Matters

One commenter expressed concerns that under Section 171.500, BIA would abuse its authority and add unreasonable costs into the calculation of its irrigation rates because the rates are based on cost estimates rather than actual costs. The commenter was particularly concerned about the potential for fraud, waste, and error. The commenter also asked how the public can obtain irrigation project cost information used to calculate rates. The Secretary of the Interior has previously determined under the existing Section 171.1(f) ''that rates will be based on a carefully prepared estimate of the cost of the normal O&M of the project.'' Furthermore, because O&M assessment rates are set a year in advance to give adequate notice to irrigators, it is necessary to calculate the proposed rates based on an estimate of the costs for the upcoming year. These figures are typically indexed based on actual costs from previous years. There is opportunity for the public to comment on the proposed rates published annually in the **Federal Register** before they become final. Actual costs of operation and maintenance activities are available from the irrigation facility servicing your farm unit. No change was made to the regulation to address these comments.

One commenter thought that Section 171.500(a) included a number of costs that should not be used in calculating rates. The commenter feared that inclusion of items such as depreciation, acquisition costs, and other costs would lead to unreasonably high and unjustifiable rates. The BIA has established rates based on the average per acre cost of all activities involved in delivering irrigation water and maintaining facilities. This regulation does not change that practice; rather, it more specifically identifies those items included in determining the annual costs. Actual costs of O&M activities are available from the irrigation facility servicing your farm unit. No change was made to the regulation to address these comments.

Two commenters stated that the BIA should calculate O&M assessments based on an individual farmer's ability to pay under 25 U.S.C. 385, 386a, and 389. Under these statutes, the Secretary's authority to set O&M charges is not subject to a determination of an individual's ability to pay. As stated above in these responses, the ''ability to pay'' provision included in 25 U.S.C. 385 refers only to repayment of construction costs. 25 U.S.C. 385 codifies several separate provisions taken from the Act of August 1, 1914, Public Law 63–160, 38 Stat. 582, 583 (1914). In addition to authorizing the Secretary to set and assess O&M rates on irrigation projects, the 1914 Act also appropriated a lump sum of money to use for construction of irrigation projects. The second provision of 25 U.S.C. 385, regarding reimbursement of construction costs where Indians have the ability to pay, only applies to the construction money appropriated in the 1914 Act and does not relate to the Secretary's O&M rate-setting authority. 25 U.S.C. 386a refers only to construction charges and is not applicable to this regulation, which only addresses O&M charges. 25 U.S.C. 389 authorizes the Secretary to investigate whether non-Indians have the ability to pay irrigation charges. Based on the outcome of such an investigation, the Secretary has discretion to adjust irrigation charges, but nowhere does the law require that an individual's ability to pay be factored into the irrigation rate-setting process. No change was made to the regulation to address these comments.

Two commenters stated that Sections 171.500 and 171.505 violated the BIA's trust responsibility to Indians. As stated above, the operation and maintenance of BIA irrigation projects is not a trust responsibility. See, e.g., *Grey* v. *United States*. With regard to comments about protection of trust resources that might be affected by the operation and maintenance of irrigation projects, the proposed regulation in no way changes the BIA's responsibility regarding irrigation projects and related resources. No change was made to the regulation to address these comments.

One commenter suggested that the amount of any rate increase should be limited from year-to-year to no more than the rate of inflation. Because the actual cost of O&M may or may not coincide with inflation, this regulation does not limit O&M rate increases to annual inflation rates. No change was made to the regulation to address these comments.

One commenter objected to Section 171.505(d), which provides that some projects may charge a minimum O&M assessment. The commenter objected to owners of small fractionated parcels being charged for irrigation service and recommended, at a minimum, that this section not apply to trust or allotted land. The commenter also claimed there was no legal basis for the minimum charge concept and stated that the BIA cannot charge O&M assessments where the land is not producing adequate funds to pay O&M assessments. This provision only applies to irrigation

projects that establish a minimum assessment. The authority to establish a minimum charge is inherent in the Secretary's statutory authority to charge O&M assessments on Indian irrigation projects. See 25 U.S.C. 381 *et seq*. Contrary to the assertion of the commenter, the BIA can charge a minimum O&M assessment regardless of the whether the land produces adequate funds to pay the assessment. No change was made to the regulation to address these comments.

One commenter noted that Section 171.510 failed to specify which irrigation projects distribute supplemental water. Such information will be available in the project-specific operating guidelines. This information was purposefully left out of the regulation because it is potentially subject to change at individual projects as water rights are determined and settled. No change was made to the regulation to address these comments.

Section 171.515 prompted one commenter to state that the BIA needs to send bills to the water users before the irrigation season starts so that farmers have an adequate amount of time to pay. Because each irrigation project sends out its own bills, this comment is most appropriately directed to the individual irrigation projects. No change was made to the regulation to address these comments.

One commenter objected to Section 171.540. No rationale was provided for the objection. To conform to the Debt Collection Improvement Act of 1996, collection of the information specified in the regulation is necessary. No change was made to the regulation to address these comments.

One commenter objected to Section 171.545 because it does not account for whether the Indian-owned land produces adequate funds to pay the O&M charges. As discussed above, the BIA can charge a minimum O&M assessment regardless of the whether the land produces adequate funds to pay the assessment. The BIA does not consider an individual's ability to pay or the ability of the land to produce adequate funds when it sets O&M rates and charges assessments. No change was made to the regulation to address these comments.

One commenter suggested that water users should be notified individually through the mail of all proposed rate changes instead of through the **Federal Register** as is provided in Section 171.565. It would not be practical for the BIA to notify each of its water users individually, nor is such notice required by law. No change was made to the regulation to address these comments.

Several commenters expressed concern about Section 171.575, in which the proposed regulation stated that the BIA could change O&M rates without first notifying irrigators if uncontrolled costs arose. Commenters were concerned that the proposed language was overly broad and should be limited to emergency situations when structural failures threatened property, public safety, or the ability of the BIA to deliver water to a majority of an irrigation project. In response to these concerns, Section 171.575 has been revised to provide for special assessments only when urgencies arise. Rates cannot be changed without notice. Special assessments are now defined in the regulation at Section 171.100. The term ''urgency'' is defined in Section 171.100 as ''a situation that we have determined may adversely impact our irrigation facilities, operation, or other irrigation activities; affect public safety; damage property or equipment.''

Subpart F—Records, Agreements, and Other Matters

One commenter raised concerns about Section 171.610. The comments are addressed above in the discussion of *incentive agreements* under Section 171.100. No change was made to the regulation to address this comment.

Subpart G—Non-Assessment Status

One commenter objected to Section 171.705 because it places the burden on the land owner to apply for an annual assessment waiver. The commenter stated that Section 171.705 is unfair because the United States, as trustee, is placing a burden on the trust beneficiary to seek relief from O&M charges. The purpose of Section 171.705 is to help address the problem of areas of an irrigation project within the constructed works where, for whatever reason, water cannot be delivered. The annual assessment waiver provides a mechanism for waiving the O&M assessment, eliminating the need for an expensive and time-consuming process to appeal a bill which has already been issued. It also provides an incentive for an irrigation project to repair or rehabilitate infrastructure to obtain assessment monies. Additionally, it would provide relief to the water user during the time it takes for lands to be re-designated to Temporarily or Permanently Non-Assessable status if so warranted. With regard to the notion of unfairness based on a trust relationship, as stated above, the operation and maintenance of BIA Irrigation Projects is not a trust responsibility.

IV. Procedural Requirements

A. Review Under Executive Order 12866

This regulation updates an existing regulation and is not a significant rule under Executive Order 12866.

(1) This regulation will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. This is an existing regulation that is being updated and revised to implement the Inspector General's audit findings and the Debt Collection Improvement Act of 1996.

(2) This regulation will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The irrigation projects impacted by these revisions are solely owned by the BIA and no other agency provides supplemental services or is impacted by the operation of these projects.

(3) This regulation does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The user fees or assessments that the BIA establishes at each irrigation project to recover its costs will eventually be impacted as the BIA reviews its rates and strives to implement full cost rates.

(4) This rule does not raise novel legal or policy issues. No new authorities or policies are being established.

B. Review Under the Regulatory Flexibility Act

The Department of the Interior certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.). An initial Regulatory Flexibility Analysis is not required because Indian tribes are not considered to be small entities for purposes of this Act.

C. Review Under the Small Business Regulatory Enforcement Fairness Act (SBREFA)

This regulation is not a major regulation under 5 U.S.C. 804(2), the SBREFA. This regulation:

(1) Does not have an annual effect on the economy of $100 million or more. The total revenue stream for the operation and maintenance of all BIA irrigation projects is approximately $25 million annually. This is below the $100 million threshold.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or

local government agencies, or geographic regions. These revisions establish a procedure for identifying full cost rates for BIA irrigation projects. This is not expected to cause major increases in the near future. However, there is a potential that this could result in appreciable rate increases in the long-term for those served by BIA irrigation projects.

(3) 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. BIA irrigation projects are generally small and have minimal impacts on the economy. The projects are not in competition with other entities since they are located on reservations that are under the purview of the Department of the Interior, Bureau of Indian Affairs.

D. Review Under the Unfunded Mandates Reform Act

This regulation does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than $100 million per year. The regulation does not have a significant or unique effect on state, local, or tribal governments or the private sector. The BIA irrigation projects are located on reservations that are under the purview of the Department of the Interior, Bureau of Indian Affairs. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Review Under Executive Order 12630

In accordance with Executive Order 12630, the regulation does not have significant takings implications. The regulation revisions do not deprive the public, state, or local governments of rights or property. A takings implication assessment is not required.

F. Review Under Executive Order 13211

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The revision to 25 CFR part 171 will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies). This regulation impacts irrigation projects that have little or no energy supply issues.

G. Review Under Executive Order 13132

In accordance with Executive Order 13132, the regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment because they will not interfere with the roles, rights, and responsibilities of states.

H. Review Under Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this regulation does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

I. Review Under the National Environmental Policy Act (NEPA)

This regulation does not constitute a major Federal action significantly affecting the quality of the human environment and no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

J. Review Under Executive Order 13175

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have identified potential effects on Indian trust resources and they are addressed in this rule. Consultation meetings have been held with the affected Tribes. Accordingly:

(1) We have consulted with the affected Tribes.

(2) We have consulted with Tribes on a government-to-government basis and the consultations have been open and candid so that the affected Tribes could fully evaluate the potential impact of the rule on trust resources.

(3) We have considered tribal views in the final regulation.

(4) We have not consulted with the other bureaus and offices of the Department about the potential effects of this regulation on Indian Tribes. Other Department bureaus and offices are not affected by this rule.

The BIA irrigation projects are vital components of the local agricultural economy of the reservations on which they are located. To fulfill its responsibilities to the Tribes, tribal organizations, water user organizations, and the individual water users, the BIA communicates, coordinates, and consults on a continuing basis with these entities on issues of water delivery, water availability, costs of administration, operation, maintenance, and rehabilitation. This is accomplished at the individual irrigation projects by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. The BIA Central Office held four consultation meetings for Tribes and tribal members. Consultation meetings were held on August 24, 2004 and May 12, 2005 in Phoenix, Arizona, and on August 26, 2004 and May 10, 2005 in Billings, Montana.

K. Review Under Paperwork Reduction Act of 1995

These regulation revisions affect the collection of information, which has been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995 with the OMB Control Number 1076–0141, expiring August 31, 2009.

The Bureau of Indian Affairs operates 15 irrigation projects that provide irrigation services to the end user. The information we collect enables us to properly bill for the services we provide by collecting information that identifies the individual responsible for paying the costs of the services. Some of the information is needed to satisfy the requirements of the Debt Collection Improvement Act of 1996. The table addresses the services available, the number of users, the burden for each, as well as the yearly total and the sections in the rule that apply to the collection items.

Service	CFR section 171	Hourly burden to respondent per request	Number of respondent requests annually	Total annual burden hours	Salary per hour ($20) × all respondent requests = annual cost burden
Requesting irrigation service	200/600	0.5	26,156	13,078	$261,560
Subdividing a farm unit	225	4	1	4	80
Requesting leaching service	305	1	40	40	800
Requesting water for domestic or stock purposes	310	.3	474	142	2,840
Building non-government structures in BIA rights-of-ways	405	3	67	201	4,020
Installing a fence on BIA property or rights-of-ways	410	1.5	52	78	1,560

Service	CFR section 171	Hourly burden to respondent per request	Number of respondent requests annually	Total annual burden hours	Salary per hour ($20) × all respondent requests = annual cost burden
What information must be provided for billing purposes ...	530	0.2	500	100	2,000
Requesting payment plans on bills	550	2	126	252	5,040
Establishing a carriage agreement (carrying third party water through our facilities to your lands)	605	1	3	3	60
Negotiating an irrigation incentive lease with the BIA	610/615	6	21	126	2,520
Requesting annual assessment waiver	710/715	1	135	135	2,700
Annual totals	.....	.....	27,575	14,159	$283,180

We estimate that we service 6,539 users who submit information about 27,575 times a year. We estimate the total annual hourly burden to be 14,159 at an estimated cost of $283,180. The users mainly request water to be turned on or turned off. Users are not required to maintain records, but may do so for business purposes. The information they submit is for the purpose of obtaining or retaining a service, namely delivery of irrigation water. While we do require personal information for the purpose of adhering to the controlling laws and regulations, we protect the information under the Privacy Act.

Comments on this information collection can be made at any time and sent to the BIA Information Collection Clearance Officer, 625 Herndon Parkway, Herndon, VA 20171. Please note that comments about the burden are separate from comments on the rule. If you wish to withhold personal information, such as your name, you must state this prominently at the beginning of you comments. We will honor your request to the extent that the law allows.

List of Subjects in 25 CFR Part 171

Indians—lands, Irrigation.

Dated: January 22, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

■ For the reasons set out in the preamble, the Department of the Interior, Bureau of Indian Affairs, is revising part 171 of Title 25 of the Code of Federal Regulations to read as follows:

PART 171—IRRIGATION OPERATION AND MAINTENANCE

Subpart A—General Provisions

Sec.

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171.105 Does this part apply to me?
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171.570 What is the **Federal Register** and where can I get it?
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171.600 What information is collected and retained on the irrigation service I receive?
171.605 Can I establish a Carriage Agreement with BIA?
171.610 Can I arrange an Incentive Agreement if I want to farm idle lands?
171.615 Can I request improvements to BIA facilities as part of my Incentive Agreement?

Subpart G—Non-Assessment Status

171.700 When do I not have to pay my annual operation and maintenance assessment?
171.705 What criteria must be met for my land to be granted an Annual Assessment Waiver?
171.710 Can I receive irrigation water if I am granted an Annual Assessment Waiver?
171.715 How do I obtain an Annual Assessment Waiver?
171.720 For what period does an Annual Assessment Waiver apply?

Authority: 25 U.S.C. 2; 25 U.S.C. 9; 25 U.S.C. 13; 25 U.S.C. 381; Act of April 4, 1910, 36 Stat. 270, as amended (codified at 25 U.S.C. 385); 25 U.S.C. 386a; Act of June 22,

1936, 49 Stat. 1803 (codified at 25 U.S.C. 389 *et seq.*).

Subpart A—General Provisions

§ 171.100 What are some of the terms I should know for this part?

Annual Assessment Waiver means a mechanism for us to waive your annual operation and maintenance assessment under certain specified circumstances.

Annual operation and maintenance assessment means the charges you must pay us for our costs of administration, operation, maintenance, and rehabilitation of the irrigation facility servicing your farm unit.

Annual operation and maintenance assessment rate means the per acre charge we establish for the irrigation facility servicing your farm unit.

Assessable acres (see *Total assessable acres*).

Authorized use means your use of water delivered by us that supports irrigated agriculture, livestock, Carriage Agreements or other uses defined by laws, regulations, treaty, compact, judicial decree, river regulatory plan, or other authority.

BIA means the Bureau of Indian Affairs within the United States Department of the Interior.

Bill means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, rehabilitation, and/or construction of the irrigation facility servicing your farm unit.

Carriage Agreement means a legally binding contract we enter into:

(1) To convey third-party water through our irrigation facilities; or

(2) To convey our water through third-party facilities.

Construction assessment means the periodic charge we assess you to repay us the funds we used to construct our irrigation facilities serving your farm unit that are determined to be reimbursable under applicable statutes.

Customer means any person or entity to whom we provide irrigation service.

Ditch (see *Farm ditch* or *Service ditch*).

Due date means the date printed on your bill, 30 days after which your bill becomes past due.

Facility (see *Irrigation facility*).

Farm ditch means a ditch or canal that you own, operate, maintain, and rehabilitate.

Farm unit means the smallest parcel of land for which we will establish a delivery point. Farm unit size is defined in the authorizing legislation for each irrigation facility, or in the absence of such legislation, we will define the farm unit size.

I, me, my, you, and *your* means all interested parties, especially persons or entities to which we provide irrigation service and receive use of our irrigation facilities, such as irrigators, landowners, leasees, irrigator organizations, irrigation districts, or other entities affected by this part and our supporting policies, manuals, and handbooks.

Idle lands means lands that are not currently farmed because they have characteristics that limit crop production.

Incentive Agreement means a written agreement between you and us that allows us to waive your annual operation and maintenance assessment, when you agree to improve idle lands and we determine that it is in the best interest of our irrigation facility.

Irrigation bill (see *Bill*).

Irrigation district (see *Representative organization*).

Irrigation facility means all structures and appurtenant works for the delivery, diversion, and storage of irrigation water. These facilities may be referred to as projects, systems, or irrigation areas.

Irrigation service means the full range of services we provide customers, including but not limited to administration, operation, maintenance, and rehabilitation of our irrigation facilities.

Irrigation water or *water* means water we deliver through our facilities for the general purpose of irrigation and other authorized purposes.

Irrigator (see *Customer*).

Landowner means a person or entity that owns fee, tribal trust, and/or individual allotted trust lands.

Leaching Service means our delivery of water to you at your request for the purpose of transporting salts below the root zone of a farm unit.

Lessee means any person or entity that holds a lease approved by us on lands to which we provide irrigation service.

Must means an imperative or mandatory act or requirement.

My land and *your land* mean all or part of your farm unit.

Obstruction means anything permanent or temporary that blocks, hinders, impedes, stops or cuts off our facilities or our ability to perform the services we determine necessary to provide service to our customers.

Organization (see *Representative organization*).

Past due bill means a bill that has not been paid within 30 days of the due date stated on your bill.

Permanently non-assessable acres (PNA) means lands that the Secretary of the Interior has determined to be permanently non-irrigable pursuant to the standards set out in 25 U.S.C. 389b.

Representative organization or *organization* means a legally established organization representing your interests that confers with us on how we provide irrigation service at a particular irrigation facility.

Service(s) (see *Irrigation service*).

Service area means lands designated by us to be served by one of our irrigation facilities.

Service ditch means a ditch or canal which we own, administer, operate, maintain, and rehabilitate that we use to provide irrigation service to your farm unit.

Soil salinity means soils containing high salt content that limit crop production.

Special assessment means a charge to cover the uncontrolled cost arising from an urgency on an irrigation facility.

Structures (see *Irrigation facility*).

Subdivision means a farm unit that has been subdivided into smaller parcels.

Supplemental water means water available for delivery by our irrigation facilities beyond the quantity necessary to provide all project customers requesting water with the per-acre water duty established for that project.

Taxpayer identifying number means either your Social Security Number or your Employer Identification Number.

Temporarily non-assessable acres (TNA) means lands that the Secretary of the Interior has determined to be temporarily non-irrigable pursuant to the standards set out in 25 U.S.C. 389a.

Total assessable acres means the total acres of land served by one of our irrigation facilities to which we assess operation and maintenance charges. The *Total assessable acres* within the service area of an irrigation facility do not include those acres of land that are designated PNA or TNA, nor those acres of land granted an Annual Assessment Waiver.

Trust or *restricted land* or *land in trust* or restricted status (see definitions in 25 CFR 151.2).

Urgency means a situation that we have determined may adversely impact our irrigation facilities, operation, or other irrigation activities; affect public safety; or damage property or equipment.

Wastewater means surface runoff and subsurface drainage from your farm unit from water delivered by us that exceeds irrigation requirements.

Water (see *Irrigation water*).

Water delivery is an activity that is part of the irrigation service we provide to our customers when water is available.

Water duty means the amount of water, in acre-feet per acre, necessary

for full-service irrigation. This value is established by decree, compact, or other legal document, or by specialized engineering studies.

Water user (see *Customer*).

We, *us*, and *our* means the United States Government, the Secretary of the Interior, BIA, and all who are authorized to represent us in matters covered under this part.

§ 171.105 Does this part apply to me?

This part applies to you if you own or lease land within an irrigation project where we assess fees and collect monies to administer, operate, maintain, and rehabilitate project facilities.

§ 171.110 How does BIA administer its irrigation facilities?

(a) We administer our irrigation facilities by enforcing the applicable statutes, regulations, Executive Orders, directives, Indian Affairs Manual, the Irrigation Handbook, and other written policies, procedures, directives, and practices to ensure the safe, reliable, and efficient administration, operation, maintenance, and rehabilitation of our facilities. Such enforcement can include refusal or termination of irrigation services to you. Copies of the above listed items may be obtained from the irrigation project serving you.

(b) We will cooperate and consult with you, as appropriate, on irrigation activities and policies of the particular irrigation facility serving you.

§ 171.115 Can I and other irrigators establish representative organizations?

Yes. You and other irrigators may establish a representative organization under applicable law to represent your interests for the particular irrigation facilities serving you.

§ 171.120 What are the authorities and responsibilities of a representative organization?

(a) A legally established organization representing you may make rules, policies, and procedures it may find necessary to administer the activities it is authorized to perform.

(b) An organization must not make rules, policies, or procedures that conflict with our regulations or any of our other written policies, procedures, directives, and manuals.

(c) If this organization collects operation and maintenance assessments and construction assessments on your behalf to be paid to us, it must pay us all your past and current operation and maintenance and construction assessment charges before we will provide irrigation service to you.

§ 171.125 Can I appeal BIA decisions?

(a) You may appeal our decisions in accordance with procedures set out in 25 CFR Part 2, unless otherwise prohibited by law.

(b) If you appeal an irrigation bill, you must pay the bill in accordance with subpart E before we will provide irrigation service to you. If you prevail on appeal, any overpayment will be refunded to you.

§ 171.130 Who can I contact if I have any questions about these regulations or my irrigation service?

Contact the local irrigation project where you receive service or want to apply for service. If your questions are not addressed to your satisfaction at the local project level, you may contact the appropriate BIA Regional Office.

§ 171.135 Where do I submit written information or requests?

Submit written information to us or make request of us in writing at the irrigation project servicing your farm unit.

§ 171.140 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0141. This information collection is specifically found in 25 CFR Sections 171.200, 171.225, 171.305, 171.310, 171.405, 171.410, 171.530, 171.550, 171.600, 171.605, 171.610, 171.615, 171.710, 171.715. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B—Irrigation Service

§ 171.200 How do I request irrigation service from the BIA?

(a) You must request service from the irrigation facility servicing your farm unit.

(b) Your request must contain at least the following information:

(1) Your full legal name;

(2) Where you want service;

(3) The time and date you want service to start;

(4) How long you want service;

(5) The rate of water flow you want, if available;

(6) How many acres you want to irrigate; and

(7) Any additional information required by the project office responsible for providing your irrigation service.

(c) You must request supplemental water in accordance with the project guidelines established by the specific project providing your irrigation service.

§ 171.205 How much water will I receive?

The amount of water you receive will be based on your request, your legal entitlement to water, and the available water supply.

§ 171.210 Where will BIA provide my irrigation service?

(a) We will provide service to your farm unit at a single delivery point that we designate.

(b) At our discretion, we may establish additional delivery points when:

(1) We determine it is impractical to deliver water to your farm unit from a single delivery point;

(2) You agree in writing to be responsible for all costs to establish an additional delivery point;

(3) You pay us our costs prior to our establishing an additional delivery point; and

(4) Any work accomplished under this section does not disrupt our service to other customers without their written agreement.

(c) We may establish your delivery point(s) at a well head.

§ 171.215 What if the elevation of my farm unit is too high to receive irrigation water?

(a) We will not change our service ditch level to provide service to you.

(b) You may install, operate, and maintain your own facilities, at your cost, to provide service to your land:

(1) From a delivery point we designate; and

(2) In accordance with specifications we approve.

§ 171.220 What must I do to my farm unit to receive irrigation service?

You must meet the following requirements for us to provide service:

(a) Put water we deliver to authorized uses;

(b) Make sure your farm ditch has sufficient capacity to carry the water we deliver; and

(c) Properly operate, maintain, and rehabilitate your farm ditch.

§ 171.225 What must I do to receive irrigation service to my subdivided farm unit?

In order to receive irrigation service, you must:

(a) Provide us a copy of the recorded plat or map of the subdivision which shows us how the irrigation water will be delivered to the irrigable acres;

(b) Pay for any extensions or alterations to our facilities that we approve to serve the subdivided units;

(c) Construct, at your cost, any facilities within your subdivided farm unit; and

(d) Operate and maintain, at your cost, any facilities within your subdivided farm unit.

§ 171.230 What are my responsibilities for wastewater?

(a) You are responsible for your wastewater.

(b) Wastewater may be returned to our facilities, but only at locations we designate, in a manner we approve, and at your cost.

(c) You must not allow your wastewater to flow or collect on our facilities or roads, except at locations we designate and in a manner we approve.

(d) If you fail to comply with this section, we may withhold services to you.

Subpart C—Water Use

§ 171.300 Does BIA restrict my water use?

(a) You must not interfere with or alter our service to you without our prior written authorization; and

(b) You must only use water we deliver for authorized uses. We may withhold services if you use water for any other purpose.

§ 171.305 Will BIA provide leaching service to me?

(a) We may provide you leaching service if:

(1) You submit a written plan that documents how soil salinity limits your crop production and how leaching service will correct the problem;

(2) We approve your plan in writing; and

(3) Your irrigation bills are not past due.

(b) Leaching service will only be available during the timeframe established by your irrigation facility.

(c) We reserve the right to terminate this service if we determine you are not complying with paragraph (a) of this section.

§ 171.310 Can I use water delivered by BIA livestock purposes?

Yes, if we determine it will not:

(a) Interfere with the operation, maintenance, or rehabilitation of our facilities;

(b) Be detrimental to or jeopardize our facilities;

(c) Adversely affect the water rights or water supply; or

(d) Cause additional costs to us that we do not agree to in writing.

Subpart D—Irrigation Facilities

§ 171.400 Who is responsible for structures on a BIA irrigation project?

(a) We may build, operate, maintain, rehabilitate or remove structures, including bridges and other crossings, on our irrigation projects.

(b) We may build other structures for your private use during the construction or extension of an irrigation project. We may charge you for structures built for your private use under this section, and we may require you to maintain them.

(c) If we require you to maintain a structure and you do not do so to our satisfaction, we may remove it or perform the necessary maintenance, and we will bill you for our costs.

§ 171.405 Can I build my own structure or take over responsibility of a BIA structure?

You may build a structure on our irrigation facility for your private use or take responsibility of one of our structures, but only under a written agreement between you and us which:

(a) Relieves us from any future liability or responsibility for the structure;

(b) Relieves us from any future costs incurred for maintaining the structure;

(c) Describes what is granted by us and accepted by you; and

(d) Provides that if you do not regularly use a structure for a period of time that we have determined, or you do not properly maintain and rehabilitate the structure, we will notify you in writing that:

(1) You must either remove it or correct any unsafe condition;

(2) If you do not comply with our notice, we may remove the structure and you must reimburse us our costs; and

(3) We may modify, close, or remove your structure without notice due to an urgency we have identified.

§ 171.410 Can I install a fence on a BIA irrigation project?

Yes. Fences are considered structures and may be installed in compliance with § 171.405.

§ 171.415 Can I place an obstruction on a BIA irrigation project?

No. You may not place obstructions on BIA irrigation projects.

(a) If you do so, we will notify you in writing that you must remove it.

(b) If you do not remove your obstruction in compliance with our notice, we will remove it and we will bill you for our costs.

(c) We can remove your obstruction without notice because of an urgency we have identified.

§ 171.420 Can I dispose of sewage, trash, or other refuse on a BIA irrigation project?

No. Sewage, trash, or other refuse are considered obstructions and must be removed in accordance with § 171.415.

Subpart E—Financial Matters: Assessments, Billing, and Collections

§ 171.500 How does BIA determine the annual operation and maintenance assessment rate for the irrigation facility servicing my farm unit?

(a) We calculate the annual operation and maintenance assessment rate by estimating the following annual costs and then dividing by the total assessable acres for your irrigation facility:

(1) Personnel salary and benefits for the facility engineer/manager and employees under their management or control;

(2) Materials and supplies;

(3) Vehicle and equipment repairs;

(4) Equipment costs, including lease fees;

(5) Depreciation;

(6) Acquisition costs;

(7) Maintenance of a reserve fund available for contingencies or emergency costs needed for the reliable operation of the irrigation facility infrastructure;

(8) Maintenance of a vehicle and heavy equipment replacement fund;

(9) Systematic rehabilitation and replacement of project facilities;

(10) Contingencies for unknown costs and omitted budget items; and

(11) Other costs we determine necessary to properly perform the activities and functions characteristic of an irrigation facility.

(b) Annual operation and maintenance assessment rates may be lowered through the exercise of our discretion when items listed in (a) of this section are adjusted pursuant to our authority under 25 U.S.C. 385, 386a and 389.

(c) If you subdivide your farm unit, you may be subject to a higher annual operation and maintenance assessment rate, which we publish annually in the **Federal Register**.

(d) At projects where supplemental water is available, the calculation of your annual operation and maintenance assessment rate may take into consideration the total estimated annual amount to be collected for supplemental water deliveries.

§ 171.505 How does BIA calculate my annual operation and maintenance assessment?

(a) We calculate your annual operation and maintenance assessment by multiplying the total assessable acres of your land within the service area of

our irrigation facility by the annual operation and maintenance assessment rate we establish for that facility.

(b) We will not assess lands that have been re-classified as either permanently non-assessable (PNA) or temporarily non-assessable (TNA) or lands that have been granted an Annual Assessment Waiver.

(c) If your lands are under an approved Incentive Agreement, we may waive your assessment as described in the Incentive Agreement (See § 171.610).

(d) Some irrigation facilities may charge a minimum operation and maintenance assessment. If the irrigation facility serving your farm unit charges a minimum operation and maintenance assessment that is more than your assessment calculated by the method described in subpart (a) of this section, you will be charged the minimum operation and maintenance assessment. We provide public notice of any minimum operation and maintenance assessments annually in the **Federal Register** (See § 171.565).

§ 171.510 How does BIA calculate my annual operation and maintenance assessment if supplemental water is available on the irrigation facility servicing my farm unit?

(a) For projects where supplemental water is available, and you request and receive supplemental water, your assessment will include two components: a base rate, which is for your per-acre water duty delivered to your farm unit; and a supplemental water rate, which is for water delivered to your farm unit in addition to your per-acre water duty.

(b) We publish base and supplemental water rates annually in the **Federal Register**. The base and supplemental water rates are established to recover the costs identified in Section 171.500(a) of this Subpart.

(c) If your project has established a supplemental water rate, and you request and receive supplemental water, we will calculate your total annual operation and maintenance assessment by adding the following two totals: (1) The total assessable acres of your land within the service area of our irrigation facility multiplied by the annual operation and maintenance assessment rate we establish for that facility; and (2) the actual quantity of supplemental water you request and we agree to deliver (in acre-feet) times the supplemental water rate established for that facility.

§ 171.515 Who will BIA bill?

(a) We will bill the landowner, unless:

(1) The land is leased under a lease approved by us, in which case we will bill the lessee, or

(2) The landowner(s) is represented by a representative organization that collects annual operation and maintenance assessments on behalf of its members and the representative organization makes a direct payment to us on your behalf.

(b) If you own or lease assessable lands within a BIA irrigation facility, you will be billed for annual operation and maintenance assessments, whether you request water or not, unless otherwise specified in § 171.505(b).

§ 171.520 How will I receive my bill and when do I pay it?

(a) You will receive your bill in the mail at the address of record you provide us.

(b) You should pay your bill no later than the due date stated on your bill.

(c) You will not receive a bill for supplemental water. You must pay us in advance at the supplemental water rate established for you project published annually in the **Federal Register**.

§ 171.525 How do I pay my bill?

(a) You can pay your bill by:

(1) Personally going to the local office of the irrigation facility authorized to receive your payment during normal business hours;

(2) Depositing your payment in an authorized drop box, if available, at the local office of the irrigation facility; or

(3) Mailing your payment to the address indicated on your bill.

(b) Your payment must be in the form of:

(1) Check or money order in the mail or authorized drop box; or

(2) Cash, check, or money order if you pay in person.

§ 171.530 What information must I provide BIA for billing purposes?

We must obtain certain information from you to ensure we can properly bill, collect, deposit, and account for money you owe the United States. At a minimum, this information is:

(a) Your full legal name;

(b) Your correct mailing address; and

(c) Your taxpayer identifying number.

§ 171.535 Why is BIA collecting this information from me?

(a) As part of doing business with you, we must collect enough information from you to properly bill and service your account.

(b) We are required to collect your taxpayer identifying number under the authority of, and as prescribed in, the Debt Collection Improvement Act of 1996, Public Law 104–134 (110 Stat. 1321–364).

§ 171.540 What can happen if I do not provide this information?

We will not provide you irrigation service.

§ 171.545 What can happen if I don't pay my bill on time?

(a) We will not provide you irrigation service until:

(1) Your bill is paid; or

(2) You make arrangement for payment pursuant to § 171.550 of this part.

(b) If you do not pay your bill prior to the close of business on the 30th day after the due date, we consider your bill past due, send you a notice, and assess you the following:

(1) Interest, as required by 31 U.S.C. 3717. Interest will accrue from the original due date stated on your bill.

(2) An administrative fee, as required by 31 CFR 901.9.

(c) If you do not pay your bill prior to the close of business of the 90th day after the due date, we will assess you a penalty, as required by 31 CFR 901.9(d). Penalties will accrue from the original due date stated on your bill.

(d) We will forward your past due bill to the United States Treasury no later than 180 days after the original due date, as required by 31 CFR 901.1, ''Aggressive agency collection activity.''

§ 171.550 Can I arrange a Payment Plan if I cannot pay the full amount due?

We may approve a Payment Plan if:

(a) You are a landowner and your land is not leased;

(b) You certify that you are financially unable to make a lump sum payment;

(c) You provide additional information we request, which may include information identified in 31 CFR 901.8, ''Collection in installments''; and

(d) You sign our Payment Plan containing terms and conditions we specify.

§ 171.555 What additional costs will I incur if I am granted a Payment Plan?

You will incur the following costs:

(a) An administrative fee to process your Payment Plan, as required by 31 CFR 901.9.

(b) Interest, accrued on your unpaid balance, in accordance with § 171.545.

§ 171.560 What if I fail to make payments as specified in my Payment Plan?

(a) We will discontinue irrigation service until your bill is paid in full;

(b) You will be in default, you will be assessed an administrative fee, and your debt will be immediately forwarded to the United States Treasury in accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

(c) You will be ineligible for Payment Plans for the next 6 years.

§ 171.565 How will I know if BIA plans to adjust my annual operation and maintenance assessment rate?

(a) We provide public notice of our proposed rates annually in the **Federal Register**.

(b) You may contact the irrigation facility servicing your farm unit.

§ 171.570 What is the Federal Register and where can I get it?

(a) The **Federal Register** is the official daily publication for Rules, Proposed Rules, and Notices of official actions by Federal agencies and organizations, as well as Executive Orders and other Presidential Documents, and is produced by the United States Government Printing Office (GPO).

(b) You can get publications of the **Federal Register**:

(1) By going on the World Wide Web at *http://www.gpo.gov*;

(2) By writing to the GPO, Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250–7954; or

(3) By calling GPO at (202) 512–1530.

§ 171.575 Can BIA charge me a special assessment?

Yes. We will make every reasonable effort to avoid charging special assessments. However, if we determine that we have a significant uncontrolled cost due to an urgency, we may charge you a special assessment. We will only charge special assessments when there are inadequate project funds available, including any emergency reserve funds held by the project.

The special assessment rate will be calculated by dividing the total uncontrolled cost, or some portion of that cost, by the total number of assessable acres. Your individual special assessment will be equal to the special assessment rate multiplied by the number of assessable acres in your farm unit.

Subpart F—Records, Agreements, and Other Matters

§ 171.600 What information is collected and retained on the irrigation service I receive?

We will collect and retain at least the following information as part of our record of the irrigation service we have provided you:

(a) Your name;

(b) Delivery point(s) where service was provided;

(c) Beginning date and time of your irrigation service;

(d) Ending date and time of your irrigation service; and

(e) Amount of water we delivered to your farm unit.

§ 171.605 Can I establish a Carriage Agreement with BIA?

(a) We may agree in writing to carry third-party water through our facilities to your lands not served by our facilities if we have determined that our facilities have adequate capacity to do so.

(b) If we determine that carrying water in accordance with paragraph (a) of this section is jeopardizing our ability to provide irrigation service to the lands we are required to serve, we will terminate the Agreement.

(c) We may enter into an agreement with a third party to provide service through their facilities to your isolated assessable lands.

(d) You must pay us all administrative, operating, maintenance, and rehabilitation costs associated with any agreement established under this section before we will convey water.

(e) We will notify you in writing no less than five days before terminating a Carriage Agreement established under this section.

(f) We may terminate a Carriage Agreement without notice due to an urgency we have identified.

§ 171.610 Can I arrange an Incentive Agreement if I want to farm idle lands?

We may approve an Incentive Agreement if:

(a) You request one in writing at least 90 days prior to the beginning of the irrigation season that includes a detailed plan to improve the idle lands, which contains at least the following:

(1) A description of specific improvements you will make, such as clearing, leveling, or other activities that will improve idle lands to a condition that supports authorized use of delivered water;

(2) The estimated cost of the improvements you will make;

(3) The time schedule for your proposed improvements;

(4) Your proposed schedule for water delivery, if necessary; and

(5) Justification for use of irrigation water during the improvement period.

(b) You sign our Incentive Agreement containing terms and conditions we specify.

§ 171.615 Can I request improvements to BIA facilities as part of my Incentive Agreement?

Yes. You may request and we may agree to make improvements as part of your Incentive Agreement that we determine are in the best interest of the irrigation facility servicing your farm unit.

Subpart G—Non-Assessment Status

§ 171.700 When do I not have to pay my annual operation and maintenance assessment?

You do not have to pay your annual operation and maintenance assessment for your land(s) within the service area of your irrigation facility when:

(a) We grant you an Annual Assessment Waiver; or

(b) We grant you an Incentive Agreement which may include waiving your annual operation and maintenance assessment; or

(c) Your land is re-designated as permanently non-assessable or temporarily non-assessable.

§ 171.705 What criteria must be met for my land to be granted an Annual Assessment Waiver?

For your land to be granted an Annual Assessment Waiver, we must determine that our irrigation facilities are not capable of delivering adequate irrigation water to your farm unit. Inadequate water supply due to natural conditions or climate is not justification for us to grant an Annual Assessment Waiver.

§ 171.710 Can I receive irrigation water if I am granted an Annual Assessment Waiver?

No. Water will not be delivered in any quantity to your farm unit if you have been granted an Annual Assessment Waiver.

§ 171.715 How do I obtain an Annual Assessment Waiver?

For your land to be granted an Annual Assessment Waiver, you must:

(a) Send us a request in writing to have your land granted an Annual Assessment Waiver;

(b) Submit your request prior to the bill due date for the year for which you are requesting the Annual Assessment Waiver; and

(c) Receive our approval in writing.

§ 171.720 For what period does an Annual Assessment Waiver apply?

Annual Assessment Waivers are only valid for the year in which they are granted. To obtain an Annual Assessment Waiver for a subsequent year, you must reapply.

[FR Doc. E8–3698 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0104]

RIN 1625–AA–09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW); Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the S.R. 74 Bridge, across the AIWW mile 283.1 at Wrightsville Beach, NC, to accommodate the annual race.

DATES: This deviation is effective from 8 a.m. to 9:30 a.m. on March 15, 2008.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Mr. Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION: The S.R. 74 Bridge, a lift drawbridge, has a vertical clearance in the closed position to vessels of 20 feet, above mean high water.

The North Carolina Department of Transportation (the bridge owner) requested a temporary deviation from the current operating regulation set out in 33 CFR 117.821(a)(5) to accommodate the Knights of Columbus Shamrock Fun Run and Walk scheduled for Saturday, March 15, 2008.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure period for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

To facilitate the race, the S.R. 74 Bridge will be maintained in the closed-to-navigation position from 8 a.m. to 9:30 a.m. on March 15, 2008.

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

We analyzed this temporary deviation under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The environmental impact that this temporary deviation will have is minimal because the drawbridge being closed to vessels for a period of an hour and a half will not result in a change in functional use, or an impact on a historically significant element or setting.

Dated: February 20, 2008.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E8–3834 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0183; FRL–8535–1]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Revisions to Emission Reduction Market System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: EPA is withdrawing the January 30, 2008 (73 FR 5435), direct final rule approving revisions to the State of Illinois' rules for its Emission Reduction Market System (ERMS).

In the direct final rule, EPA commented on statements in and implications of a memorandum from Robert Meyers, Principal Deputy Assistant Administrator for Air and Radiation, to EPA's Regional Administrators dated October 3, 2007. (The rule gave an incorrect date of October 7, 2007.) The memorandum addresses the status of new source review criteria for ozone nonattainment areas based on a decision by the Court of Appeals for the DC Circuit in the case of South Coast *Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006).

In commenting upon the memorandum of Robert Meyers in the direct final rule of January 30, 2008, Region 5 unintentionally addressed an issue of national policy. As the issue is one of national policy, the implications of the Court ruling should only be addressed in national guidance and rulemaking. Notwithstanding our observations regarding the implications of the Robert Meyers memorandum, the rationale for proposing to approve the ERMS rule revisions did not rely on these observations, and so the soundness of EPA's proposal is not affected. Therefore, EPA is withdrawing the January 30, 2008, direct final rule, but announcing today that the associated proposed rule will stand as a proposed rule. (See 73 FR 5471). Comments on the proposed rule continue to be due on February 29, 2008. EPA will publish a revised final rule after considering any comments that it may receive. EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 73 FR 5435 on January 30, 2008, is withdrawn as of February 29, 2008. Comments on the proposed rule published at 73 FR 5471 on January 30, 2008, remain due on February 29, 2008.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 21, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Accordingly, the amendments to 40 CFR 52.720 which published in the **Federal Register** on January 30, 2008 (72 FR 5435) on page 5439 are withdrawn as of February 29, 2008.

[FR Doc. E8–3800 Filed 2–28–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 401 and 405

[CMS–4064–RCN]

RIN 0938–AM73

Medicare Program; Changes to the Medicare Claims Appeal Procedures; Continuation of Effectiveness and Extension of Timeline for Publication of Final Rule

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

ACTION: Interim final rule; continuation of effectiveness and extension of timeline for publication of final rule.

SUMMARY: This notice announces the continuation of effectiveness of a Medicare interim final and the extension of the timeline for publication of the final rule. This notice is issued in accordance with section 1871(a)(3)(C) of the Social Security Act (the Act), which allows an interim final rule to remain in effect after the expiration of the timeline specified in section 1871(a)(3)(B) of the Act if prior to the expiration of the timeline, the Secretary publishes in the **Federal Register** a notice of continuation and explains the exceptional circumstances justifying the extension of the timeline for publishing a final rule.

DATES: *Effective Date:* February 29, 2008.

FOR FURTHER INFORMATION CONTACT: David Danek, (617) 565–2682, or Arrah Tabe-Bedward, (410) 786–7129.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1871(a)(3)(A) of the Social Security Act (the Act) requires the Secretary, in consultation with the Director of the Office of Management and Budget (OMB), to establish and publish a regular timeline for the publication of a final rule based on the previous publication of a proposed rule or an interim final rule. In accordance with section 1871(a)(3)(B) of the Act, such regular timeline may vary among different regulations, based on the complexity of the rule, the number and scope of the comments received, and other relevant factors. The timeline for publishing the final regulation; however, cannot exceed 3 years from the date of publication of the proposed or interim final rule, unless there are exceptional circumstances. After consultation with the Director of OMB, we published a notice in the **Federal Register** on December 30, 2004 (69 FR 78442) establishing a general 3-year timeline for finalizing a Medicare proposed and an interim final rule.

Section 1871(a)(3)(C) of the Act states that a Medicare interim final rule shall not continue in effect if the final rule is not published before the expiration of the regular timeline, unless the Secretary publishes at the end of the regular timeline a notice of continuation that includes an explanation of why the regular timeline was not met. Upon publication of such a notice, the timeline for publishing the final rule is extended for 1 year.

II. Notice of Continuation

Section 521 of the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Benefits Improvement and Protection Act of 2000 (BIPA), amended section 1869 of the Act to provide for significant changes to the Medicare claims appeal procedures. On November 15, 2002, we published in the **Federal Register** a proposed rule (67 FR 69312) consistent with Section 521 of BIPA. An interim final rule with comment implementing the BIPA provisions as well as further changes to the claim appeals procedures enacted in Title IX of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) appeared in the **Federal Register** in March 2005 (70 FR 11420). Under the previously established regular timeline for publication of a final rule, we must publish a final rule responding to public comments on the interim final rule with comment period no later than March 1, 2008.

This notice announces an extension of the timeline for publication of the final rule and the continuation of effectiveness of the interim final rule with comment period. We are not able to meet the 3-year timeline for publication of the final rule due to the complexity of the rule and the need to ensure coordination with other government agencies. Specifically, the development of the final rule requires collaboration among other HHS agencies (that is, the Office of Medicare Hearings and Appeals (OMHA), and the Departmental Appeals Board (DAB), as well as extensive involvement from the HHS Office of the General Counsel). Although OMHA was not in existence when the interim final rule with comment period was published, OMHA is now a key component of the Medicare claims appeal process. We note that extensive coordination is needed to ensure that there is a mutual understanding of these provisions among all three affected administrative agencies. In addition, the development of the final rule requires significant coordination with other HHS policy related regulations (that is, the Provider Reimbursement Determinations and Appeals final rule and the Medicare Prescription Drug Appeals Process proposed rule (Part D proposed rule,)) which are currently under development.

We believe that an extension of the publication timeline is necessary and appropriate to ensure that we are able to address all of the issues raised in response to the interim final.

Therefore, this notice extends the timeline for publication of the final rule until March 1, 2009. In accordance with section 1871(a)(3)(C) of the Act, interim final rule shall remain in effect through March 1, 2009 (unless the final rule is published and becomes effective before March 1, 2009).

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

Dated: February 25, 2008.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. E8–3861 Filed 2–28–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 488

[CMS–2278–IFC4]

RIN 0938–AP22

Revisit User Fee Program for Medicare Survey and Certification Activities

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

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period implements the continuation of the revisit user fee program for Medicare Survey and Certification activities, in accordance with the statutory authority in the Continuing Appropriations Resolution entitled, ''Making further continuing appropriations for the fiscal year 2008, and for all other purposes,'' Public Law 110–149 (''Continuing Resolution'') signed into law on December 21, 2007. On September 19, 2007, we published a final rule that established a system of revisit user fees applicable to health

care facilities that have been cited for deficiencies during initial certification, recertification or substantiated complaint surveys and require a revisit to confirm that previously-identified deficiencies have been corrected.

DATES: *Effective date:* These regulations are effective February 29, 2008, and applicable beginning December 21, 2007.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 29, 2008.

ADDRESSES: In commenting, please refer to file code CMS–2278–IFC4. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Submit electronic comments on CMS regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2278–IFC3, P.O. Box 8010, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2278–IFC4, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Kelley Tinsley, (410) 786–6664.

SUPPLEMENTARY INFORMATION:

Submitting Comments: As the public was provided an opportunity to comment on the substance of the rule during the comment period prior to the publication of the September 19, 2007 final rule, and as the substance of the rule is not changed by this interim final rule with comment period, we are accepting comments only to the extent that they pertain to the applicability of the new authority for the rule. You can assist us by referencing the file code CMS–2278–IFC3.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.cms.hhs.gov/eRulemaking.* Click on the link ''Electronic Comments on CMS Regulations'' on that Web site to view public comments.

Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

SUPPLEMENTARY INFORMATION:

I. Background

In the June 29, 2007 **Federal Register** (72 FR 35673), we published the proposed rule entitled, ''Establishment of Revisit User Fee Program for Medicare Survey and Certification Activities'' and provided for a 60-day comment period. In the September 19, 2007 **Federal Register** (72 FR 53628) we published the Revisit User Fee Program final rule. That final rule set forth final requirements and a final fee schedule for providers and suppliers who require a revisit survey as a result of deficiencies cited during an initial certification, recertification, or substantiated complaint survey.

The Centers for Medicare & Medicaid Services (CMS) has in place an outcome-oriented survey process that is designed to ensure that existing Medicare-certified providers and suppliers or providers and suppliers seeking initial Medicare certification, meet statutory and regulatory requirements, conditions of participation, or conditions for coverage. These health and safety requirements apply to the environments of care and the delivery of services to residents or patients served by these facilities and agencies. The Secretary of the Department of Health and Human Services (HHS) has designated CMS to enforce the conditions of participation/coverage and other requirements of the Medicare program. The revisit user fee will be assessed for revisits conducted in order to determine whether deficiencies cited as a result of failing to satisfy federal quality of care requirements have been corrected.

Pursuant to the requirements of the Continuing Appropriations Resolution budget bill for fiscal year (FY) 2007, the Secretary directed CMS to implement the revisit user fees for FY 2007 for certain providers and suppliers for which a revisit was required to confirm that previously-identified failures to meet federal quality of care requirements had been remedied. The fees recover the costs associated with the Medicare Survey and Certification program's revisit surveys. The primary purpose for implementing the revisit user fees is to ensure the continuance of CMS Survey and Certification quality assurance activities that improve patient care and safety. The fees became effective upon publication September 19, 2007, when the final rule was published.

II. Provisions of the Interim Final Rule

The current Continuing Resolution Public Law 110–149, amends Public Law 110–92 Division B by striking the date specified in section 106(3) and inserting 'December 31, 2007'. The current Continuing Resolution authorizes HHS to continue to impose

revisit user fees until December 31, 2007, as follows:

* * * * *

Sec. 101. Such amounts as may be necessary, at a rate for operations as provided in the applicable appropriations Acts for fiscal year 2007 and under the authority and conditions provided in such Acts, for continuing projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise specifically provided for in this joint resolution, that were conducted in fiscal year 2007, and for which appropriations, funds, or other authority were made available in the following appropriations Acts:

* * * * *

(3) The Continuing Appropriations Resolution, 2007 (division B of Public Law 109–289, as amended by Public Law 110–5). *(H.J. Res. 20, § 101 (2007)).*

Sec. 106. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act for fiscal year 2008, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available until whichever of the following first occurs:

* * * * *

(3) December 31, 2007.

As directed by the Secretary, in the September 19, 2007 **Federal Register** (72 FR 53628), we established the revisit user fee program for revisit surveys. We put forth in regulation the relevant definitions, criteria for determining the fees, the fee schedule, procedures for the collection of fees, the reconsideration process, enforcement and regulatory language addressing enrollment and billing privileges, and provider agreements. In the September 19, 2007 final rule, cost projections were based on FY 2006 actual data and were expected to amount to $37.3 million for FY 2007. These calculations were included in section IV of the final rule (72 FR 53642).

We stated in the final rule that, ''if authority for the revisit user fee is continued, we will use the current fee schedule in [the final rule] for the assessment of such fees until such time as a new fee schedule notice is proposed and published in final form.'' (72 FR 53628). The current Continuing Resolution continues the authority of the FY 2007 Continuing Resolution from December 21, 2007 through December 31, 2007.

Due to the enactment of the Consolidated Appropriations Act, 2008, on December 26, 2007, the current Continuing Resolution will cease to be effective on December 26, 2007. The authority of the Consolidated Appropriations Act supersedes that of the current Continuing Resolution, therefore ending its effective date the day on which the Appropriations Act was signed. Accordingly, the revisit fees will continue to be assessed for the 5-day time period authorized by the current Continuing Resolution to begin December 21, 2007, and ending on the day the Consolidated Appropriations Act was signed by the President, December 26, 2007.

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not always able to acknowledge or respond to all of them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with *5 U.S.C. 553*(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We find that the notice-and-comment procedure is unnecessary in this circumstance because providers and suppliers have already been provided notice and an opportunity to comment on the substance of this rule. This interim final rule with comment merely updates the Congressional authority under which the rule operates.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day public comment period.

We ordinarily provide a 30-day delay in the effective date of the provisions of a rule in accordance with the Administrative Procedure Act (APA), 5 U.S.C. 553(d). However, the delay in the effective date may be waived as, in pertinent part, ''provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Secretary finds that good cause exists to waive the 30-day effective date delay.

The good cause exception to the 30-day effective date delay provision of section 553(d) of the APA is read to be broader than the good cause exception to the notice and comment provision of section 553(b) of the APA.

The legislative history of the APA indicates that the purpose for deferring the effectiveness of a rule under section 553(d) was to ''afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.'' S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong. 2d Sess. 25 (1946). In this case, affected parties do not need time to adjust their behavior before this rule takes effect. This rule merely updates the authority under which the revisit fee is assessed and does not provide any additional requirements for the affected parties. Moreover, with or without a revisit fee, a provider or supplier must be found to have corrected significant deficiencies in order to avoid termination. Additionally, the application of a fee for the revisit does not place appreciable administrative burdens on the affected providers or suppliers. We do not expect appreciable cost to State survey agencies because we are undertaking the billing and collection of the revisit user fee.

We identified in the September 19, 2007 final rule the immediacy of this revisit user fee program and the specific statutory requirement contained limited in the Continuing Resolution that required us to implement the revisit user fee program in FY 2007. Accordingly, providers and suppliers have been on notice for some time that these fees will be imposed, and do not need additional time to be prepared to comply with the requirements of this regulation. We believe that given the short timeframe that we have to collect fees before the statutory authority of the current Continuing Resolution expires, there is good cause to waive the 30-day effective date.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19,

1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This rule is not a major rule. The aggregate costs will total approximately $37.3 million in any 1 year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity. Small businesses are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.9 million or less in any one year for purposes of the RFA. The September 19, 2007 final rule provided an analysis on the impact of small entities (72 FR 53642–3). The analysis published in the final rule remains valid. Since this interim final rule with comment merely updates the Congressional authority under which the rule operates, we have determined that this rule will not have a significant impact on small entities based on the overall effect on revenues.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (superseded by Core Based Statistical Areas) and has fewer than 100 beds. This rule affects those small rural hospitals that have been cited for a deficiency based on noncompliance with required conditions of participation and for which a revisit is needed to ensure that the deficiency has been corrected. We identified in the September 19, 2007 final rule that for the effective period of that rule that less than 3 percent of all hospitals may be assessed a revisit user fee and that less than 1 percent of those hospitals would be rural hospitals (72 FR 53643). The analysis published in the final rule remains valid. Since this interim final rule with comment merely updates the Congressional authority under which the rule operates, we maintain that this rule will not have a significant impact on small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This interim final rule with comment will have no mandated effect on State, local, or tribal governments and the impact on the private sector is estimated to be less than $120 million and will only affect those Medicare providers or suppliers for which a revisit user fee is assessed based on the need to conduct a revisit survey to ensure deficient practices that were cited have been corrected.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule with comment will not substantially affect State or local governments. This rule establishes user fees for providers and suppliers for which CMS has identified deficient practices and requires a revisit to assure that corrections have been made. Therefore, we have determined that this interim final rule with comment will not have a significant effect on the rights, roles, and responsibilities of State or local governments.

B. Impact on Providers/Suppliers

There is no change on the impact on providers and suppliers with the publication of this interim final rule with comment. The impact remains as discussed in the final rule (72 FR 53643).

Final Fee Schedule for Onsite and Offsite Revisit Surveys

The FY 2007 fee schedule published on September 19, 2007 (72 FR 53647) in the final rule will be retained. As noted in the final rule, the published fee schedule will be used by CMS for the assessment of fees until a new fee schedule is proposed and published in final form. The calculations used to determine the fee as identified in the final rule will be the same (72 FR 53645–6). We will continue to assess a flat fee based on provider or supplier type and type of revisit survey conducted. Table A below identifies the final fee schedule.

TABLE A.—FINAL FEE SCHEDULE

Facility	Fee assessed per offsite revisit survey	Fee assessed per onsite revisit survey
SNF & NF	$168	$2,072
Hospitals	168	2,554
HHA	168	1,613
Hospice	168	1,736
ASC	168	1,669
RHC	168	851
ESRD	168	1,490

Costs for All Revisit User Fees Assessed

We anticipated that the combined costs for all providers and suppliers for all revisit surveys in FY 2007 would total approximately $37.3 million on an annual basis, with onsite revisit surveys amounting to approximately $34.6 million and offsite revisit surveys totaling approximately $2.7 million. (72 FR 53645). However, actual fees assessed in FY 2007 were much less than this amount, since CMS did not charge for revisits that occurred prior to publication of the final regulation. Since we continue to operate under this same estimate for FY 07, we provide below monthly estimates of the impact for the period of the current Continuing Resolution in Tables B and C. For the period of the current Continuing Resolution, we will use the FY 2007 fee schedule established in the final rule for the assessment of fees until a new fee schedule notice is proposed and published as final.

In Table B below, we provide the projected costs for the period of this current Continuing Resolution based on the fee schedule of the final rule. We expect the combined costs for all providers and suppliers for all onsite revisit surveys for the period of this current Continuing Resolution to total approximately $473,503 thousand. We first multiplied the total number of onsite revisit surveys in one year by the expected revisit user fees assessed per revisits as finalized in Table A above, estimated by provider or supplier, to obtain the annual cost of revisit surveys. We then divided this number by 365 to obtain the daily cost per provider or supplier of onsite revisit surveys. To obtain the total costs for onsite revisit surveys for the effective period of the current Continuing Resolution (5 days), we then took the daily cost and multiplied it by 5. Finally, to achieve

the total costs for all onsite revisit surveys for the period of this current Continuing Resolution, we totaled all providers and suppliers.

TABLE B.—ONSITE REVISIT SURVEYS—ESTIMATED 5 DAY COSTS

Facility	Number of onsite revisit surveys (FY 2006)	Fee assessed per onsite revisit surveys (hrs × $112)	Number of onsite revisit surveys est. for 5 days*	5 day costs for onsite revisit surveys**
SNF & NF	14,288	$2,072	198	$ 405,544
Hospitals	575	2,554	8	20,117
HHA	1,068	1,613	15	23,598
Hospice	256	1,736	4	6,087
ASC	95	1,669	1	2,171
RHC	149	851	2	1,737
ESRD	698	1,490	10	14,246
Total	17,129	.....	238	473,500

*Estimated total numbers of onsite revisit surveys for 5 days were rounded up after dividing yearly survey totals from FY 2006 actual data by 365 and multiplying that number by 5.
**5 day costs may differ from the multiple of 5 day revisits and fee per revisit due to rounding.

We expect the combined costs for all providers and suppliers for all offsite revisit surveys to total $37,684 for the period of the current Continuing Resolution. In Table C below, we first estimated by provider or supplier the number of offsite revisit surveys expected for an entire fiscal year, and multiplied this number by the expected revisit user fee of $168 per offsite revisit survey to obtain the annual cost of surveys. We then divided this number by 365 to obtain the daily cost of offsite revisit surveys. To obtain the total costs for offsite revisit surveys for the period of the current Continuing Resolution (5 days), we then took the daily cost and multiplied it by 5. Finally, to achieve the total costs for all offsite revisit surveys for the period of this current Continuing Resolution, we totaled all providers and suppliers.

TABLE C.—OFFSITE REVISIT SURVEYS—ESTIMATED 5 DAY COSTS

Facility	Number of offsite revisit surveys (FY 2006)	Fee assessed per offsite revisit survey ($112 × 1.5 hrs)	Number of offsite revisit surveys est. for 5 days*	5 day costs for offsite revisit surveys**
SNF & NF	15,138	$168	207	$34,838
Hospitals	278	168	4	640
HHA	517	168	1	1,190
Hospice	51	168	1	117
ASC	93	168	1	214
RHC	67	168	1	154
ESRD	231	168	3	531
Total	16,375	.....	224	37,684

*Estimated total numbers of offsite revisit surveys for 5 days were rounded up after dividing yearly survey totals from FY 2006 actual data by 365 and multiplying that number by 5.
**5 day costs may differ from the multiple of 5 day revisits and fee per revisit due to rounding.

As shown in Table D below, we provide the aggregate costs expected as projected for the entire FY 2007, as well as the costs we would expect to offset for the period of the current Continuing Resolution.

TABLE D.—TOTAL COSTS COMBINED FOR ALL REVISITS SURVEYS PER FISCAL YEAR & PERIOD OF CR

	FY 2007	Period of CR*
Onsite Revisit Surveys	$34,565,760	$473,503
Offsite Revisit Surveys	2,751,000	37,684
Total Costs All Revisits	37,316,760	511,187

*CR period's costs are based on CR period revisit surveys rounded up to the nearest whole number as shown in Tables B & C.

E. Alternatives Considered

We considered a number of alternatives to the revisit user fee program. Such alternatives were discussed in the final rule published on September 19, 2007 (72 FR 53647). We affirm the continuing validity of that analysis. The current Continuing Resolution provides CMS with the authority to continue projects or activities as was otherwise provided for in FY 2007, and as such CMS is required to publish an interim final rule with comment. This interim final rule with comment merely updates the

Congressional authority under which the rule operates.

In accordance with Executive Order 12866, this rule was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recording requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 488 as set forth below:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395(hh)); Continuing Resolution Pub. L. 110–149 H.J. Res. 72.

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

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

Dated: January 30, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: February 14, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–3830 Filed 2–28–08; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–264; FCC 07–219]

The Commission's Cable Horizontal and Vertical Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts a rule prohibiting cable operators from owning or having an attributable interest in cable systems serving more than 30 percent of multichannel video programming subscribers nationwide. It also eliminates the overbuilder exception, which allowed cable operators to count against its horizontal limit only those cable subscribers served by its ''incumbent cable franchises'' and excluding new subscribers gained through overbuilding ''non-incumbent cable systems. Elimination of the exception prevents a cable operator near the horizontal limit from using the exception to exceed the 30 percent limit and thereby reduce the open field below the 70 percent necessary to ensure that no single operator can, by simply refusing to carry a video network, cause it to fail. The revised rule balances the need to ensure that cable operators cannot use their dominant position in the multichannel video programming distribution (MVPD) market to impede unfairly the flow of video programming to consumers with consideration of the efficiencies and other benefits that might be gained through increased ownership or control.

DATES: Effective March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Elvis Stumbergs, (202) 418–7878; Mania Baghdadi, (202) 418–2330.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Fourth Report and Order* in MB Docket No. 92–264, FCC 07–219, adopted December 18, 2007, and released February 11, 2008. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs*). The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) (202) 418–0432 (TTY).

Summary of the Report and Order

1. This *Order* was adopted pursuant to Section 613(f)(1)(A) of the Telecommunications Act of 1996 (''1996 Act''), which requires the Commission to prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest, and to respond to the concerns of the United States Court of Appeals for the District of Columbia Circuit in *Time Warner Entertainment Co.* v. *FCC* (''*Time Warner II*'') that the Commission had failed adequately to justify the 30 percent limit.

2. The court in *Time Warner II* held that Section 613(f) authorizes the Commission to set a limit to ensure that no single company could be in a position single-handedly to deal a programmer a death blow but does not authorize the agency to regulate the legitimate, independent editorial choices of multiple MSOs and further found that the Commission lacked evidence that cable operators would collude and that the Commission could not simply assume that cable operators would coordinate their behavior in an anticompetitive manner.

3. The *Report and Order* establishes a 30% cable horizontal ownership limit by relying on a modified ''open field'' approach to ensure that no single cable operator becomes so large that a programming network can survive only if that operator carries it and eliminates the overbuilder exception to the calculation of the limit.

4. The Commission considered comments it had received relative to three possible approaches to use in fashioning a horizontal ownership limit: (1) The open field approach, which examines whether one or more cable operators are large enough to effectively limit the viability of a programming network if they denied it carriage; (2) monopsony theory, which considers whether a cable operator has sufficient market power to restrict the price it pays for programming by purchasing less of it and thereby restrict the flow of programming to subscribers; and (3) bargaining theory, which examines the negotiations between the programming network and the cable operator in order to determine the point at which programmers will curtail their activities and thereby limit the quality and diversity of programming.

5. We determine that the open field approach, suitably modified, represents the best method of determining an appropriate horizontal limit. We determine that monopsony theory does not apply to this market because of the lack of a single market price in the market for programming. Although we find that bargaining theory is useful in establishing the need for a limit, the record is insufficient to derive a specific limit using this theory.

6. The open field approach determines whether a programming network would have access to alternative MVPDs of sufficient size to allow it to successfully enter the market, if it were denied carriage by one or more of the largest cable operators.

7. To calculate a horizontal limit that meets this test, we first determine the minimum number of subscribers a network needs in order to survive in the marketplace and then estimate the percentage of subscribers a network is

likely to serve once it secures a carriage contract. The resulting calculation indicates that an open field of 70 percent and an ownership limit of 30 percent are necessary to ensure that no single cable operator is able to impede unfairly the flow of programming to consumers.

8. The Commission eliminated the overbuilder exception, which allowed counting against a cable operator's horizontal limit only those cable subscribers served by its ''incumbent cable franchises,'' excluding new subscribers gained through overbuilding ''non-incumbent cable systems and concluded that elimination of the exception was necessary to prevent a cable operator near the horizontal limit to use the exception to exceed the 30 percent limit, which would have the effect of reducing the open field below the 70 percent that is necessary to ensure that no single operator can, by simply refusing to carry a video network, cause it to fail.

9. The revised rule balances the need to ensure that cable operators cannot use their dominant position in the multichannel video programming distribution (MVPD) market to impede unfairly the flow of video programming to consumers with consideration of the efficiencies and other benefits that might be gained through increased ownership or control.

10. The Commission further clarifies 76.503(g) of its rules which requires any cable operator serving 20 percent or more of nationwide MVPD subscribers to certify prior to acquiring additional MVPDs that no violation of the horizontal ownership limit will occur as a result of its acquisition, but does not prescribe a particular form of certification. We clarify in the *Report and Order* that certifications must be executed by an officer of the corporation and must state that the number of attributable subscribers served by the applicant is reported accurately in the certification. If this number varies from subscriber counts the cable operator has provided to other government agencies, financial institutions, or third-party publishers of industry-wide subscriber data, the certification shall disclose and explain the nature of such discrepancies. The Commission will consider specific allegations of misrepresentation on a case-by-case basis.

Fourth Report and Order

Paperwork Reduction Act Analysis

11. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

12. *Congressional Review Act.* The Commission will send a copy of this Fourth Report and Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

13. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *2005 Second FNPRM* in MB Docket No. 92–264, FCC 05–96. The Commission sought written public comment on the proposals in the *2005 Second FNPRM* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, This Fourth Report and Order

14. In this Fourth Report and Order, we set the Commission's cable horizontal ownership limit to bar cable operators from having an attributable interest in cable systems serving more than 30 percent of multichannel video programming subscribers nationwide. Our action here responds to the court's decision in *Time Warner Entertainment Co.* v. *FCC* (''*Time Warner II*''), which remanded the Commission's 30 percent limit. Our decision implements the statutory directive that we impose a limit designed to ensure that no single cable operator or group of operators, because of their size, unfairly impede the flow of programming to consumers.

15. In establishing the 30 percent cable horizontal ownership limit, we rely on a modified ''open field'' approach to ensure that no single cable operator becomes so large that a programming network can survive only if that largest operator carries it. To calculate a horizontal limit that meets this test, we first determine the minimum number of subscribers a network needs in order to survive in the marketplace, and then estimate the percentage of subscribers a network is likely to serve once it secures a carriage contract. The resulting calculation indicates that an open field of 70 percent and an ownership limit of 30 percent are necessary to ensure that no single cable operator is able to impede unfairly the flow of programming to consumers.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

16. None of the parties in this proceeding filed comments on how issues raised in the 2001 FNPRM or the 2005 Second FNPRM would impact small entities.

C. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

17. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

18. *Cable and Other Program Distribution.* The Census Bureau recently updated the NAICS so that these firms are included in the Wired Telecommunications Carriers category which is described as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has updated the small business size standards to accord with the revised NAICS. The size standard for Wired Telecommunications Carriers is all firms having an average of 1,500 or fewer employees. The Census Bureau has not collected information on the size distribution of firms in the revised classification of Wired

Telecommunications Carriers. Accordingly we will apply the new size standard to Census Bureau data for 2002 regarding the size distribution of Cable and Other Program Distribution. There were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,178 firms had fewer than 1,000 employees. Thus, under this size standard, the majority of firms can be considered small.

19. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 653,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 994 cable operators nationwide, all but thirteen are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

20. *Private Cable Operators (PCOs) also known as Satellite Master Antenna Television (SMATV) Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Wired Telecommunications Carriers includes PCOs or SMATV systems and, thus, small entities are defined as all such companies with 1,500 or fewer employees. Currently, there are approximately 76 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately 900,000 subscribers. Because these operators are not rate regulated, they are not required to file employment data with the Commission. Furthermore, we are not aware of any privately published employment information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCO may qualify as small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

21. The new rule imposes a 30 percent limit on the number of MVPD subscribers nationwide that one person or entity may serve. No new reporting, recordkeeping or other compliance requirements are adopted.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

23. In this *Fourth Report and Order*, based on its calculations using an open field approach, the Commission sets a 30 percent horizontal ownership limit. This rule limits the size of large MSOs and does not prevent small cable operators from growing larger. We also continue to base the limit on the number of actual MVPD subscribers, a figure used by cable operators when they negotiate with and purchase programming from video programmers. *See Id.* Finally, the horizontal cap would not change pursuant to the *Order*. Accordingly, we do not find that the *Order* will impose new burdens on small cable operators.

24. The Commission considered other alternatives, with respect to the horizontal limit, but the *Order* adopted a 30 percent horizontal ownership limit based on evidence that this is the level necessary to preserve programmer viability. The Commission believes that the decisions it adopts in the Order serve our public interest goals and comport with the evidence.

F. Report to Congress

25. The Commission will send a copy of the *Fourth Report and Order*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Fourth Report and Order*, including this Supplemental FRFA, to the Chief Counsel for the advocacy of the SBA. A copy of the *Fourth Report and Order* and the Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 76

Multichannel video and Cable television service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citations for part 76 continue to read as follows:

Authority: 47 U.S.C. 152(a), 154(i), 303, 307, 309, 310, 533.

■ 2. Amend § 76.503 by revising paragraph (a) and by removing and reserving paragraphs (b), (c) and (d) as follows:

§ 76.503 National subscriber limits.

(a) No cable operator shall serve more than 30 percent of all multichannel-video programming subscribers nationwide through multichannel video programming distributors owned by such operator or in which such cable operator holds an attributable interest.

* * * * *

[FR Doc. E8–3700 Filed 2–28–08; 8:45 am

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0612243157–7799–07]

RIN 0648–AT87

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery and Shrimp Fishery of the Gulf of Mexico; Amendment 27/14; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule to implement joint Amendment 27 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico and Amendment 14 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (Amendment 27/14) that was published in the **Federal Register** Tuesday, January 29, 2008.

DATES: This correction is effective February 28, 2008.

FOR FURTHER INFORMATION CONTACT: Anik Clemens, 727–824–5305; fax: 727–824–5308; e-mail: *Anik.Clemens@noaa.gov*.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of this correction was published Tuesday, January 29, 2008 (73 FR 5117). That final rule contains an error in the regulatory text. In § 622.37, paragraph (d)(1)(iv), the conversion of 13 inches to 38.1 cm is incorrect. The correct conversion is 33.0 cm. All other information remains unchanged and will not be repeated in this correction.

Correction

On page 5128, in the first column, in § 622.37(d)(1)(iv), ''13 inches (38.1 cm)'' should read ''13 inches (33.0 cm)''.

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

Dated: February 22, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. E8–3840 Filed 2–28–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XF93

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for the A season allowance of the 2008 Pacific cod sideboard limits apportioned to non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2008 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 2008, until 1200 hrs, A.l.t., September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of 2008 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA is 354 metric tons (mt) for the GOA, as established by the 2008 and 2009 harvest specifications for groundfish of the GOA published on February 27, 2008.

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2008 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 344 mt in the offshore component in the Central Regulatory Area of the GOA. The remaining 10 mt in the offshore component in the Central Regulatory Area of the GOA will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 25, 2008.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: February 25, 2008.

James P. Burgess,

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

[FR Doc. 08–894 Filed 2–26–08; 3:12 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XF94

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non-American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Offshore Component in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for the A season allowance of the 2008 Pacific cod sideboard limits apportioned to non-American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2008 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 27, 2008, until 1200 hrs, A.l.t., September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of 2008 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA is 239 metric tons (mt) for the GOA, as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (published on February 27, 2008).

In accordance with § 680.22(e)(2)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the A season allowance of the 2008 Pacific cod sideboard limits apportioned to non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 229 mt in the offshore component in the Western Regulatory Area of the GOA. The remaining 10 mt in the offshore component in the Western Regulatory Area of the GOA will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to non-AFA crab vessels catching Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 25, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: February 26, 2008.

James P. Burgess

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

[FR Doc. 08–895 Filed 2–26–08; 3:12 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XF90

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the A season allowance of the 2008 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 29, 2008, through 1200 hrs, A.l.t., March 1, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 12, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XF90, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*;
- Mail: P.O. Box 21668, Juneau, AK 99802;
- Fax: (907) 586–7557; or
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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

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

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA under § 679.20(d)(1)(iii) on February 20, 2008 (73 FR 9707, February 22, 2008).

NMFS has determined that approximately 2,400 mt of Pacific cod remain in the directed fishing allowance for vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2008 TAC of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA effective 1200 hrs, A.l.t., March 1, 2008.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 25, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 12, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: February 26, 2008.

James P. Burgess

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

[FR Doc. 08–896 Filed 2–26–08; 3:12 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 41
Friday, February 29, 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 AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC09

Common Crop Insurance Regulations; Grape Crop Insurance Provisions and Table Grape Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Grape Crop Insurance Provisions and Table Grape Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to fraud, waste, or abuse.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business April 29, 2008 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled ''Grape Crop Insurance Provisions'', by any of the following methods:

- By Mail to: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205.
- By Express Mail to: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131–3055.
- E-mail: *DirectorPDD@rma.usda.gov.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.

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

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through June 30, 2008.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

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

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

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

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

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

Environmental Evaluation

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

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending § 457.138 Grape Crop Insurance Provisions and § 457.149 Table Grape Crop Insurance Provisions effective for the 2010 and succeeding crop years.

The Grape Crop Insurance Provisions were last updated effective for the 2000 crop year and the Table Grape Crop Insurance Provisions were last updated for the 2001 crop year. Since then, several requests have been made for changes to enhance the coverage offered, address quality adjustment procedures, and improve clarity of the policy provisions.

The proposed changes are as follows:

1. FCIC proposes to amend § 457.138 Grape Crop Insurance Provisions as follows:

a. FCIC is proposing to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions; therefore, it is duplicative and should be removed in the Crop Provisions;

b. Section 1—FCIC is proposing to revise the definitions of ''harvest'' and ''set out'' so the definitions are consistent in both grape policies. FCIC is proposing to add a definition of ''type'' because optional units by type are being proposed. FCIC also proposes to remove the definition of ''varietal group'' because insurance is not being provided by varietal group. The term ''varietal group'' will be replaced with the term ''type'' wherever it appears in the Crop Provisions.

Section 2—Current provisions regarding unit structure in California allow basic units by variety, and optional units when insured acreage is located on non-contiguous land or is grown using an organic practice. In all other states, basic units are allowed by share, and optional units are provided by: (1) By section or section equivalent or FSA farm serial number; (2) irrigated and non-irrigated acreage; (3) for grapes grown using an organic farming practice; and (4) by separate varietal group when such groups are specified in the Special Provisions. These unit structures accommodate various production practices, growing conditions, varieties, and availability of data in the different states. Since the last revisions, availability of production data has improved and can now serve as a basis for change in the unit structure. Therefore, FCIC is proposing to change the unit structure for all states except California. The proposal will allow producers in all states other than California and Arizona to obtain optional units by grape type (a category of grapes (one or more varieties) identified as a type in the Special Provisions). In these states, all insurable grape acreage in the county must still be insured. The proposed change will offer expanded coverage and allow producers greater flexibility in unit structure when separate types are specified in the Special Provisions. In addition, since FCIC is also proposing to add grape crop insurance coverage in the state of Arizona, FCIC is proposing that producers in Arizona have the same unit structure as is available to producers in California. The varieties, production practices, and risks in Arizona are most similar to California. Previously, Arizona grape crop insurance coverage was only available by written agreement.

d. Section 3—FCIC is proposing to reorganize subsections (a), (b) and (c) into subsection (a), which will be applicable to California and Arizona, and subsection (b), which will be applicable to all other states. FCIC is proposing that the price and coverage level be specified by variety in California and Arizona and by type in all other states as specified in the Special Provisions.

A new subsection (c) is being proposed that offers an alternative to the published price election. This alternative price will be based on a contract price, provided specific requirements are met, and use of the contract price is allowed by the Special Provisions of Insurance. Grape growers in some regions are entering into contracts that require them to use cultural practices to produce fewer tons of grapes than they have historically produced. In return, they receive a higher price per ton to compensate for the reduced tonnage. In these cases, the published price election, which is usually based on historical average prices, does not provide adequate insurance coverage for these producers. This proposal will consider the contract price and reduced tonnage to provide an appropriate level of insurance protection for the producer.

In subsection (d), FCIC is proposing to allow a producer in Arizona to apply for a written agreement to establish a price election if the Special Provisions do not provide a published price election for a specific variety the producer wishes to insure. This is currently allowed only in California.

In subsection (g), FCIC is proposing to revise the provision to specify that no producer in any state will be allowed to increase the coverage level or the ratio of the price election to the maximum price election if a cause of loss that could reduce yield is evident prior to the time of the requested increase. These revisions will not only clarify the provisions, they will also increase the flexibility to add insurance coverage in other states, if appropriate.

e. Section 4—FCIC is proposing to add Arizona to the states with a contract change date of October 31.

f. Section 5—FCIC is proposing to add Arizona to the states with a cancellation and termination date of January 31.

g. Section 6—FCIC is proposing that producers in Arizona also report grape acreage by variety as producers in California currently do (each variety in California constitutes a type) and producers in all other states report grape acreage by type.

h. Section 7—FCIC is proposing that producers in Arizona be able to elect which varieties they wish to insure as is currently applicable in California. In all states except Arizona and California, producers will be required to insure all grape types specified in the Special Provisions.

In subsection (b), FCIC proposes to clarify only grapes grown for wine, juice, raisins, or canning are insurable under this policy. However, if any grapes initially intended for these uses are ultimately put to another use (i.e. table grapes), the production to count will be on a tonnage basis and no additional quality adjustment other than that specified in the Grape Crop Provisions will be available.

In subsection (e), FCIC proposes to allow insurance for acreage that has not produced a two-ton average in at least one of the three prior crop years if provided for in the Special Provisions. This proposal will allow insurability requirements to be tailored to specific situations. For example, there may be certain varieties or contracts with reduced tonnage requirements where normal production levels are below 2 tons per acre. Instead of requiring an inspection, such varieties can be specified in the Special Provisions.

i. Section 9—FCIC is proposing to revise the number of days coverage begins from 10 to 20 days when an application is taken after a specified date. This change is being proposed to be more consistent with other perennial crop policies where it may be possible to forecast loss events. A delay of coverage until 20 days after application is made should greatly reduce the ability to predict losses. FCIC also proposes to add a provision allowing termination for the current crop year when insurance attaches prior to the termination date but the premium for the previous year is not paid.

In subsection (a)(2), FCIC is proposing to remove the seven listed states of California, Arizona, Idaho, Mississippi, Oregon, Texas and Washington, to allow the continuous coverage provision to apply to all states. In subsection (a)(3), FCIC is proposing to change the end of the insurance period date for Idaho, Oregon and Washington from November 1 to November 10 and add Arizona to the states using this same date. FCIC has been informed that acreage is still normally being harvested in these states until November 10.

j. Section 12—FCIC is proposing to clarify that even if the grapes are put to a use other than wine, juice, raisins, or canning, they will count as production to count on a tonnage basis, and quality adjustment is limited to those specified in the Crop Provisions. In subsection (e)(2)(i), FCIC is proposing to clarify the quality adjustment procedure. FCIC is proposing that the value per ton of the damaged grapes will be divided by the value per ton for undamaged grapes. The value of undamaged grapes will not exceed the maximum price election for such grapes. This will ensure that the undamaged grapes are not over-valued.

2. FCIC proposes to amend § 457.149 Table Grape Crop Insurance Provisions as follows:

a. FCIC is proposing to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions; therefore, it is duplicative and should be removed in the Crop Provisions;

b. Section 1—FCIC is proposing to revise the definitions of ''harvest'' and ''set out'' to be consistent in both grape policies. FCIC is proposing to add definitions of ''type'' and ''USDA grade standard''. The term ''type'' is added because it is proposed to be used in the structure of optional units. The term ''USDA grade standard'' is added to establish an objective standard by which the table grapes will be graded for the purposes of quality adjustment when there is no applicable state standard. FCIC is proposing to revise the definition of ''lug'' to add standards for states other than Arizona and California. FCIC also proposes to add language indicating the Special Provisions may specify a different number of pounds per lug. This will allow flexibility in the event standards change from year to year. FCIC also proposes to remove the definition of ''cluster thinning and removal'' as it is no longer referenced in the policy;

c. Section 2—To be consistent with the Grape Crop Provisions, FCIC is proposing to add a new subsection (c) to provide unit division by type for all states, except Arizona and California, when separate types are specified in the Special Provisions;

d. Section 3—FCIC is proposing to specify that in the states of Arizona and California the producer may select only one price election and coverage level for each table grape variety in the county. FCIC is proposing to add a new subsection (b) to allow producers in all states except Arizona and California to select only one price election and coverage level for each grape type specified in the Special Provisions;

e. Section 4—FCIC is proposing to add a contract change date of August 31 for all states, except Arizona and California. This will allow the insurance coverage to be modified to more accurately reflect the desired coverage period and allow approved insurance providers sufficient time to train agents on the changes so they can properly inform their insureds;

f. Section 5—FCIC is proposing to add cancellation and termination dates of November 20, in all states, except Arizona and California. This provides insurance coverage that more accurately reflects the production period;

g. Section 6—FCIC is proposing to add provisions for states other than Arizona and California that require the producer to report acreage by each type insured;

h. Section 7—FCIC is proposing to revise the introductory text of section 7 to specify the crop insured will be any insurable variety the producer elects to insure in Arizona and California or all insurable types in the county for which a premium rate is provided by the actuarial documents in all states, except Arizona and California. This change is necessary because California and Arizona offer insurance by variety but as stated above, all other states will now offer insurance by type. The remaining subsections have been revised to ease in reading and to provide consistency between the Table Grape and Grape Crop Provisions;

i. Section 9—FCIC is proposing to revise the number of days before coverage begins from 10 days to 20 days when an application is taken after a specified date. This change is being proposed to be more consistent with other perennial crop policies where it may be possible to forecast loss events. A delay of coverage until 20 days after application is made should greatly reduce the ability to predict losses. Subsections have been redesignated to provide consistency between the Table Grape and Grape Crop Provisions;

j. Section 10—FCIC is proposing to revise the causes of loss to be consistent with the Grape Crop Provisions. This means that insects and plant disease are now covered causes of loss except for losses caused by the insufficient or improper application of pest control or disease control measures; and

k. Section 12—FCIC proposes to revise section 12(c)(1)(iii) to include the appropriate state or USDA standards, if state standards are not available for table grapes.

List of Subjects in 7 CFR Part 547

Crop insurance, Grapes, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2010 and succeeding crop years to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

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

2. Amend § 457.138, Grape crop insurance provisions as follows:

a. In the first line of the introductory text remove ''2000'' and add ''2010'' in its place;

b. Remove the paragraph immediately preceding section 1;

c. Amend section 1 by revising the definitions of ''harvest'' and ''set out'',

adding a definition of ''type'', and removing the definition of ''varietal group'';

d. Revise section 2;

e. Revise section 3;

f. Revise section 4;

g. Revise section 5;

h. Revise section 6;

i. Revise section 7;

j. Revise section 8;

k. Amend section 9 by revising paragraph (a) and the introductory text in paragraph (b);

l. Amend section 10 by revising paragraph (a) introductory text;

m. Amend section 11 by revising the introductory text; and

n. Amend section 12 by adding the word ''type'' after the phrase ''varietal group'' in both places in paragraphs (b)(2) and (4), revising paragraphs (c)(2) and (e)(2)(i).

The added and revised text reads as follows:

§ 457.138 Grape crop insurance provisions

* * * * *

1. Definitions.

* * * * *

Harvest. Removing the mature grapes from the vines either by hand or machine.

* * * * *

Set out. Physically planting the grape plants in the vineyard.

* * * * *

Type. A category of grapes (one or more varieties) identified as a type in the Special Provisions.

2. Unit Division.

(a) In Arizona and California only:

(1) A basic unit as defined in section 1 of the Basic Provisions will be divided into additional basic units by each variety that you insure; and

(2) Provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(b) In all states except Arizona and California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate type when separate types are specified in the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions:

(a) In Arizona and California, you may select only one price election and coverage level for each grape variety in the county.

(b) In all states except Arizona and California, you may select only one price election and coverage level for each grape type specified in the Special Provisions.

(c) In addition to the definition of ''price election'' contained in section 1 of the Basic Provisions, a price election based on the price contained in your grape contract is allowed if provided by the Special Provisions. In the event any contract requires a reduction in the amount of production from any insured acreage, your approved yield will be adjusted in accordance with section 3(e).

(d) In Arizona and California only, if the Special Provisions do not provide a price election for a specific variety you wish to insure, you may apply for a written agreement to establish a price election. Your application for the written agreement must include:

(1) The number of tons sold for at least the two most recent crop years; and

(2) The price received for all production of the grape variety in the years for which production records are provided.

(e) You must report by the production reporting date designated in section 3 of the Basic Provisions, by type or variety, if applicable:

(1) Any damage, removal of bearing vines, change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing vines on insurable and uninsurable acreage;

(3) The age of the vines and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and the grape type or variety, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(f) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect of the following: interplanted perennial crop; removal of vines; damage; change in practices and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

(g) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for Arizona and California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in Arizona and California, and November 20 for all other states.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must report your acreage:

(a) In Arizona and California, by each grape variety you insure; or

(b) In all other states, by each grape type you insure.

7. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be any insurable variety that you elect to insure in Arizona and California, or in all other states all insurable types, in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for wine, juice, raisins, or canning (if such grapes are put to another use, they will still be insured and they will count as production to count in accordance with section 12(c)(2(ii));

(c) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(d) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; and

(e) That have produced an average of two tons of grapes per acre unless otherwise provided in the Special Provisions, in at least one of the three crop years immediately preceding the insured crop year, or we inspect and allow insurance on such acreage.

8. Insurable Acreage.

In lieu of the provisions in section 9 of the Basic Provisions that prohibit

insurance attaching to a crop planted with another crop, grapes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period.

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins on February 1 in Arizona and California, and November 21 in all other states of each crop year. Notwithstanding the previous sentence, if your application is received by us after January 12 but prior to February 1 in Arizona or California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the vineyard.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) If your grape policy is cancelled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(4) The calendar date for the end of the insurance period for each crop year is as follows, unless otherwise specified in the Special Provisions:

(i) October 10 in Mississippi and Texas;

(ii) November 10 in Arizona, California, Idaho, Oregon and Washington; and

(iii) November 20 in all other states.

(b) In addition to the provisions of section 11 of the Basic Provisions:

* * * * *

10. Cause of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following cause of loss that occur during the insurance period:

* * * * *

11. Duties in the Event of Damage or Loss.

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

* * * * *

12. Settlement of Claim.

* * * * *

(c) * * *

(2) All harvested production from the insurable acreage:

(i) Grape production that is harvested and dried for raisins will be converted to a fresh weight basis by multiplying the number of tons of raisin production by 4.5.

(ii) Grapes grown for wine, juice, raisins or canning and put to another use, will be counted as production to count on a tonnage basis and no quality adjustment other than that specifically provided for in your policy is available.

* * * * *

(e) * * *

(2) * * *

(i) Dividing the value per ton of the damaged grapes by the value per ton for undamaged grapes (the value of undamaged grapes will be the lesser of the average market price or the maximum price election for such grapes); and

* * * * *

3. Amend § 457.149 Table grape crop insurance provisions as follows:

a. In the first line of the introductory text, remove ''2001'' and add ''2010'' in its place;

b. Remove the paragraph immediately preceding section 1;

c. Amend section 1 by revising the definitions of ''harvest'', ''lug'', and ''set out'', adding a definition of ''type and USDA grade standard'', and removing the definition of ''cluster thinning and removal'';

d. Revise section 2;

e. Revise section 3;

f. Revise section 4;

g. Revise section 5;

h. Revise section 6;

i. Revise section 7;

j. Revise section 8;

k. Revise section 9;

l. Revise section 10;

m. Amend section 11 by revising the introductory text; and

n. Amend section 12 by revising paragraphs (b)(2) and (4) and (c)(1)(iii).

The added and revised text reads as follows:

§ 457.149 Table grape crop insurance provisions.

* * * * *

1. Definitions.

* * * * *

Harvest. Removing the mature grapes from the vines either by hand or machine.

* * * * *

Lug. Twenty (20) pounds of table grapes in the Coachella Valley, California district, and all other states. Twenty-one (21) pounds in all other California districts, or as otherwise specified in the Special Provisions.

Set out. Physically planting the grape plants in the vineyard.

* * * * *

Type. A category of grapes (one or more varieties) identified as a type in the Special Provisions.

USDA grade standard. United States standard used to determine the minimum quality grade will be: (1) The United States Standards for Grades of Table Grapes (European or Vinifera Type); (2) the United States Standard for Grades if American (Eastern Type Bunch Grapes; and (3) the United States Standards for Grades of Muscadine (Vitis rotundifolia) Grapes. The quantity and number of samples required will be determined in accordance with procedure issued by FCIC or as provided on the Special Provisions of Insurance.

2. Unit Division.

(a) In Arizona and California only:

(1) A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by each table grape variety that you insure; and

(2) Provisions in the Basic Provisions that provide for optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(b) In all states except Arizona and California, in addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated acreage as provided in the unit division provisions contained in the Basic Provisions, a separate optional unit may be established if each optional unit:

(1) Is located on non-contiguous land; or

(2) Consists of a separate type when separate types are specified in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Price for Determining Indemnities. In addition to the requirements of section 3 of the Basic Provisions:

(a) In Arizona and California, you may select only one price election and

coverage level for each table grape variety in the county.

(b) In all states except Arizona and California, you may select only one price election and coverage level for each table grape type specified in the Special Provisions.

(c) You must report by the production reporting date designated in section 3 of the Basic Provisions, by type or variety if applicable:

(1) Any damage, removal of bearing vines, change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing vines on insurable and uninsurable acreage;

(3) The age of the vines and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and the table grape type or variety, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(d) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect of the following: Interplanted perennial crop; removal of vines; damage; change in practices and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

(e) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for Arizona and California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in Arizona and California, and November 20 for all other states.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must report your acreage:

(a) In Arizona and California, by each table grape variety you insure; or

(b) In all other states, by each type you insure.

7. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be any insurable variety of table grapes that you elect to insure in Arizona and California, or in all other states all insurable types, in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown for harvest as table grapes;

(c) That are adapted to the area;

(d) That are grown in a vineyard that, if inspected, is considered acceptable by us;

(e) That, after being set out or grafted, have reached the number of growing seasons designated by the Special Provisions; or

(f) That have produced an average of at least 150 lugs of table grapes per acre in at least one of the most recent three crop years in your actual production history base period. However, we may agree in writing to insure acreage that has not produced this amount.

8. Insurable Acreage.

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance attaching to a crop planted with another crop, table grapes interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period.

(a) In accordance with the provisions of section 11 of the Basic Provisions.

(1) For the year of application, coverage begins on February 1 in Arizona and California, and November 21 in all other states. Notwithstanding the previous sentence, if your application is received by us after January 12 but prior to February 1 in Arizona or California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20-day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the vineyard.

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) If your table grape policy is cancelled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates, whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(4) The calendar date for the end of insurance period for each crop year is the date specified in the Special Provisions.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of table grapes on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium will be due or indemnity paid for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

10. Cause of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the vineyard;

(3) Insects, except as excluded in 10(b)(1), but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Phylloxera, regardless of cause; or

(2) Inability to market the table grapes for any reason other than the actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss.

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

* * * * *

12. Settlement of Claim.

* * * * *

(b) * * *

(2) Multiplying the result in section 12(b)(1) by the respective price election for the variety or type;

* * * * *

(4) Multiplying the total production to be counted of the variety or type (see section 12(c)) by the respective price election;

* * * * *

(c) * * *

(1) * * *

(iii) Unharvested production that meets, or would meet if properly handled, the state quality standards or the appropriate USDA grade standard (if no state standard is applicable); and

* * * * *

Signed in Washington, DC, on February 21, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–3850 Filed 2–28–08; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. AMS–FV–07–0151; FV08–959–1 PR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the South Texas Onion Committee (Committee) for the 2007–08 and subsequent fiscal periods from $0.02 to $0.03 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Assessments upon onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by March 17, 2008.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682–2833, Fax: (956) 682–5942, or E-mail: *Belinda.Garza@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable onions beginning on August 1, 2007, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2007–08 and subsequent fiscal periods from $0.02 to $0.03 per 50-pound equivalent of onions.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–05 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA

upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on November 16, 2007, and unanimously recommended 2007–08 expenditures of $202,315 and an assessment rate of $0.03 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were $193,315. The assessment rate of $0.03 is $0.01 higher than the rate currently in effect. The Committee recommended the increased rate to continue to support the increased budget for research started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase, the Committee's reserve funds would drop to $114,728. The Committee believes a reserve that low is not adequate for its operations.

The major expenditures recommended by the Committee for the 2007–08 fiscal period include $64,315 for personnel and office expenses, $45,000 for compliance, $25,000 for promotion, and $30,000 for research. Budgeted expenses for these items in 2006–07 were $62,315, $43,000, $25,000, and $25,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the fiscal period are estimated at 5,775,000 fifty-pound equivalents, which should provide $173,250 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $196,543) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2007–08 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 118 producers of onions in the production area and approximately 34 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2006–07 marketing year, the industry's 34 handlers shipped onions produced on 12,460 acres with the average and median volume handled being 179,457 and 171,537 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 34 handlers were estimated to be $86.7 million, with average and median revenues being $2.55 million and $2.35 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that 32 of the 34 (94 percent) handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $6,500,000 annual receipt threshold. All of the 118 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $750,000.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2007–08 and subsequent fiscal periods from $0.02 to $0.03 per 50-pound equivalent. The Committee unanimously recommended 2007–08 expenditures of $202,315 and an assessment rate of $0.03 per 50-pound equivalent. The proposed assessment rate of $0.03 is $0.01 higher than the current rate. The quantity of assessable onions for the 2007–08 fiscal period is estimated at 5,775,000 fifty-pound equivalents. Thus, the $0.03 rate should provide $173,250 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be more than adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2007–08 fiscal period include $64,315 for personnel and office expenses, $45,000 for compliance, $25,000 for promotion, and $30,000 for research. Budgeted expenses for these items in 2006–07 were $62,315, $43,000, $25,000, and $25,000, respectively.

The Committee recommended the increased rate to continue funding a research project begun last year without having to draw a large amount from reserves. Without the increase, the Committee's reserve funds would drop to $114,728. The Committee believes a reserve that low is not adequate for its operations.

The Committee reviewed and unanimously recommended 2007–08 expenditures of $202,315, which included increases in the management fee, compliance, and research. Numerous alternative expenditure levels were discussed based upon the relative value of the research project to the onion industry. The assessment rate of $0.03 per 50-pound equivalent of assessable onions was then determined

by dividing the total recommended budget by the quantity of assessable onions, estimated at 5,775,000 fifty-pound equivalents for the 2007–08 fiscal period. The assessment rate should generate $173,250 in income. Considering income from interest and assessments, total income should be approximately $24,065 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2007–08 fiscal period could range between $10.00 and $28.00 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total grower revenue could range between .11 and .30 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 16, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2007–08 fiscal period began on August 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2007, an assessment rate of $0.03 per 50-pound equivalent is established for South Texas onions.

Dated: February 26, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–898 Filed 2–26–08; 3:31 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006 and 1007

[AMS–DA–07–0059; AO–388–A22, AO–356–A43 and AO–366–A51; Docket No. DA–07–03–B]

Milk in the Appalachian, Florida and Southeast Marketing Areas; Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO No.
1005	Appalachian ..	AO–388–A22
1006	Florida	AO–356–A43
1007	Southeast	AO–366–A51

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule, Partial recommended decision.

SUMMARY: This decision recommends adoption of proposals that would increase the maximum administrative assessment rate in the Appalachian, Florida and Southeast Federal milk marketing orders.

DATES: Comments must be submitted on or before April 29, 2008.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, United States Department of Agriculture, STOP 9200–Room 1031, 1400 Independence Avenue, SW., Washington, DC 20250–1031. You may send your comments by the electronic process available at the Federal eRulemaking portal: *http://www.regulations.gov* or by submitting comments to *amsdairycomments@usda.gov.* Reference should be made to the title of the action and docket number.

FOR FURRTHER INFORMATION CONTACT: Gino M. Tosi, Associate Deputy Administrator, Order formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231–Room 2971, 1400 Independence Ave., SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This decision recommends adoption of amendments that would allow the market administrator in the Appalachian, Florida and Southeast marketing areas to increase the maximum administrative assessment rate up to 8 cents per cwt on all pooled milk, if necessary, to maintain the mandated reserve fund level.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During May 2007, the time of the hearing, there were 2,744 dairy farmers pooled on the Appalachian order. In the Southeast order, 2,924 dairy farmers were pooled and 283 dairy farmers were pooled on the Florida order. Of these, 2,612 dairy farmers in the Appalachian order (or 95.2 percent), 2,739 dairy farmers in the Southeast order (or 94 percent) and 153 dairy farmers in the Florida order (or 54 percent) were considered small businesses.

During May 2007, there were a total of 36 plants associated with the Appalachian order (22 fully regulated plants, 10 partially regulated plants, 2 producer-handlers and 2 exempt plants). A total of 55 plants were associated with the Southeast order (33 fully regulated plants, 9 partially regulated plants, 2 producer-handlers and 11 exempt plants). A total of 25 were plants associated with the Florida order (13 fully regulated plants, 9 partially regulated plants, 1 producer-handler and 2 exempt plants). The number of plants meeting the small business criteria under the Appalachian, Southeast and Florida orders were 8 (or 22.2 percent), 18 (or 32.7 percent) and 11 (or 44 percent), respectively.

Administrative assessments are charged without regard to the size of any dairy industry or entity. Therefore the proposed amendments will not have a significant economic impact on a substantial number of small entities.

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This recommended decision does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the approved forms are routinely used in most business transactions. The forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

No other burdens are expected to fall on the dairy industry as a result of overlapping Federal rules.

Interested parties were invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 3, 2007; published May 8, 2007 (72 FR 25986).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, STOP 9200–Room 1031, 1400 Independence Ave., SW., Washington DC 20250–9200, by April 29, 2008. Six copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)). The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. Some evidence was received that specifically addressed these issues and some of the evidence encompassed entities of various sizes.

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing

Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Tampa, Florida, on May 21–23, 2007, pursuant to a notice of hearing issued May 3, 2007.

The material issues on the record of hearing relate to:

1. Administrative Assessment Rate Increases

Findings and Conclusions

Three proposals published in the hearing notice as Proposals 4, 5 and 6 seeking to increase the maximum administrative assessment rates of the Appalachian, Southeast and Florida orders should be adopted. Specifically, the maximum administrative assessment rates collected on pooled producer milk in the Appalachian, Southeast and Florida orders should be increased from the current maximum administrative assessment rate of 5 cents per cwt to 8 cents per cwt. Proposal 4 was submitted by the Appalachian Market Administrator and Proposals 5 and 6 were submitted by the Market Administrator for the Southeast and Florida orders.

According to the Assistant Market Administrator for the Appalachian order, Proposal 4 was offered to ensure that sufficient funds are available for administering the Appalachian order. The witness added that Proposal 4 would amend Section 1005.85 (7 CFR 1005.85) to provide for all of the administrative assessment language pertinent to the Appalachian provisions and would discontinue the reference to Section 1000.85 (7 CFR 1000.85). The witness explained that administration and operating costs include administrative, accounting human resources, economic, pooling and audit staff expenses.

The Assistant Market Administrator for the Appalachian order stated that the Market Administrator is required to maintain a specific level of operating reserves. The reserve level, the witness said, must be maintained in the event that an order is terminated and would fund the necessary costs for closing out an order; completing pools and audits and paying severance and leases. The reserve level is detailed in the MA Instruction 207 that is issued by the Deputy Administrator of Dairy Programs, said the witness.

The Assistant Market Administrator for the Appalachian order said that the majority of the administrative assessment revenue comes from pooled producer milk. Additionally, the witness said, assessments are also collected on other source receipts assigned to Class I and certain route disposition in the marketing area by partially regulated distributing plants. The witness stated that although the maximum administrative assessment rate allowable on pooled producer milk is 5 cents per cwt, the rate currently collected each month is 4 cents per cwt, which has remained unchanged since January 2000.

The Assistant Market Administrator for the Appalachian order said that during 2000–2002, producer milk pooled on the Appalachian order averaged 547 million pounds per month. According to the witness, the 4 cent per cwt assessment rate at this volume of milk created enough revenue to fund Appalachian order operations and maintain the mandated operating reserve. The witness stated that from 2003–2005, producer milk pooled on the order averaged 525 million pounds per month and in 2006, producer milk pooled on the order averaged 520 million pounds per month. The witness also compared the first 4 months of 2007 to the first 4 months of 2006 and stated that producer milk pooled on the order was down 3.45 percent.

The Assistant Market Administrator for the Appalachian order explained that about $215,000 is needed each month to cover basic operating expenses. By keeping the assessment rate of 4 cents per cwt, the witness said 538 million pounds of producer milk would be needed each month to cover monthly order expenses. The witness further explained that the Appalachian order was in an operating deficit in 2003, 2004 and 2006 and had a balanced budget in 2005. During 2003–2006, the witness said, the volumes of pooled producer milk did not generate sufficient revenue to fund order operations and lowered the mandated operating reserves.

According to the Assistant Market Administrator for the Appalachian order, a decision effective December 1, 2006 (71 FR 62377), established a zero diversion limit on Class I milk receiving transportation credits. The decision, the witness said, reduced the amount of milk that could be pooled on the order and reduced the amount of assessment revenue collected during the period of July through December, when those volumes of milk would be pooled. In addition, the witness said that Proposal 1, if adopted, would add January and February as additional transportation credit payout months, further reducing the amount of milk that could be pooled on the Appalachian order. The witness stressed that tightening pooling provisions of the order impacts the amount of producer milk pooled on the order. The witness expressed concern that less milk pooled on the order would reduce administrative assessment revenue and the ability to fund order operations while maintaining the mandated reserve level.

The Assistant Market Administrator for the Appalachian order said that efforts are made by the Market Administrator to control costs of carrying out order operations. According to the witness, cost control efforts include a reduction of office staff by 29 percent through attrition since January 2003, contracting with outside computer services, negotiating a telecommunications contract, consolidating a field office and reducing travel and mail expenses. The witness stressed that regardless of the Market Administrator's efforts to control costs and efficiently administer the order, gains in efficiency cannot make up for revenue lost due to a reduction in milk volumes.

The Assistant Market Administrator for the Appalachian order concluded by emphasizing that increasing the maximum administrative assessment rate to 8 cents per cwt would only be the maximum rate allowable and not necessarily the rate assessed. The witness said the actual rate assessed would only be as high as determined by the Market Administrator with approval by the Dairy Programs Deputy Administrator.

According to the Market Administrator for the Southeast and Florida orders, Proposals 5 and 6 were offered to ensure that there are sufficient funds to carry out administration of the orders. The witness said the proposals would amend sections 1006.85 (7 CFR 1006.85) and 1007.85 (7 CFR 1007.85) to provide for all of the administrative assessment language pertinent to the Southeast and Florida orders, and would discontinue the reference to section 1000.85 (7 CFR 1000.85). The witness explained that administration and operating expenses of the order include pooling, auditing and providing market information.

The Market Administrator explained that the order is required to maintain a specified level of operating reserves. The reserve level, the witness said, is detailed in the MA Instruction 207, that is issued by the Deputy Administrator of Dairy Programs. The witness said the reserve level is kept to cover necessary costs of closing out an order, such as

completing pools, audits and paying severance and lease payments.

The Market Administrator for the Southeast and Florida orders explained that the majority of the monthly administrative assessment is collected from pooled producer milk. The witness added that additional assessments are also collected from other source receipts associated with Class I and certain route disposition in the marketing area by partially regulated distributing plants. The witness stated that the market administrator is largely dependent on the administrative assessment revenue to fund the operations of the orders. The witness noted that since 2000, the administrative assessment for both orders has contributed over 80 percent of the total income of the market administrator office.

According to the Market Administrator for the Southeast and Florida orders, the combined monthly average of pooled producer milk for the two orders in 2000 was 862.8 million pounds. In 2001, the witness said, the combined monthly average of producer milk pooled in both orders was 878.4 million pounds and in 2002, the combined monthly average was 885.0 million pounds. The witness said that during 2000–2002, the assessment rates charged in the Southeast and Florida orders of 3.5 and 3 cents per cwt, respectively, along with the volume of producer milk, were sufficient to fund order operations and maintain the mandated reserve funds.

The Market Administrator for the Southeast and Florida orders said that in 2003, although producer milk in the Florida order increased by 5 percent, producer milk in the Southeast order decreased 11 percent, resulting in a considerable decrease in assessment collections. According to the witness, during 2003, funds were drawn from the operating reserves, reducing the reserve level near the mandated minimum. The witness said that as a result, effective with January 2004 milk deliveries, the administrative assessment rates increased by 1 cent to 4.5 and 4 cents per cwt for the Southeast and Florida orders, respectively.

The Market Administrator for the Southeast and Florida orders stated that in 2004, the monthly average pounds of producer milk pooled increased over 2003 by 1 percent and 5 percent in the Southeast and Florida orders, respectively. The witness added that in 2005, producer milk increased over 2004 by 5 percent and 8.8 percent in the Southeast and Florida orders respectively, and in 2006, producer milk increased over 2005 by 6.8 percent and stayed the same in the Southeast and Florida orders, respectively.

According to the Market Administrator for the Southeast and Florida orders, the administrative assessments implemented in 2004, with the increase in producer milk during 2004–2006 and efforts to control costs, have been sufficient to cover operating expenses and build an adequate reserve level. The witness added that the Market Administrator continues to take measures to control costs. The witness said that from 2000–2006, cost control measures included a 15 percent reduction in staff through attrition, increased use of technology to hold meetings and conduct audits, a reduction in travel expenses and a decrease in communication costs.

The Market Administrator for the Southeast and Florida orders explained that Proposal 2 seeks to limit an average of 12.3 percent of allowable diversions in the Southeast order, which would reduce the amount of milk pooled on the order, as well as the value of administrative assessments used to fund order operations. The witness also noted a decision effective December 1, 2006 (71 FR 62337), that reduced allowable diversions by the volume of transportation credit claims. The witness also expressed concern that the downward trend in southeast milk production and marketing decisions made by handlers provides an increased potential for variability in the revenue available for order operations.

The Market Administrator for the Southeast and Florida orders concluded that while the proposals seek to increase the maximum assessment rate from 5 cents per cwt to 8 cents per cwt, the 8 cents per cwt would not necessarily be the rate charged. The witness stressed that the assessed rate would only be high enough to cover operating expenses and maintain the mandated reserve level as approved by the Deputy Administrator for Dairy Programs.

A post-hearing brief submitted on behalf of Dairy Cooperative Marketing Association (DCMA) expressed support for the market administrator assessment increase for the Appalachian, Southeast and Florida milk orders in Proposals 4, 5 and 6, respectively.

The hearing record reveals that fluctuations in the volumes of milk pooled on the Appalachian, Southeast and Florida orders can be attributed to a combination of declining milk supply and the tightening of diversion limits in all three marketing areas. This combination can reduce Market Administrator revenues to a level too low for the proper administration of the orders while maintaining the mandated reserve level. The recommended adoption of Proposals 4, 5 and 6 will create a more stable revenue stream for the administration of the three southeast orders.

It is reasonable to increase the maximum administrative assessment rate to 8 cents per cwt in the Appalachian, Southeast and Florida orders to ensure that the Market Administrators have the proper funds to carry out all of the services provided by the three marketing areas. While the maximum administrative assessment rate should be increased to 8 cents per cwt in the Appalachian, Southeast and Florida orders, the actual rate charged should only be as high as necessary to properly administer the orders and provide necessary services to market participants.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian, Southeast and Florida orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for the milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreement upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Appalachian, Southeast and Florida marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions by be carried out.

List of Subjects in 7 CFR Part 1005, 1006 and 1007

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Parts 1005, 1006 and 1007, are proposed to be amended as follows:

PARTS 1005, 1006 AND 1007—MILK IN THE APPALACHIAN, SOUTHEAST AND FLORIDA MARKETING AREAS

1. The authority citation for 7 CFR part 1005 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 1005.85 is revised, to read as follows:

§ 1005.85 Assessment for order administration.

On or before the payment receipt date specified under § 1005.71, each handler shall pay to the market administrator its pro rata share of the expense of administration to the order at a rate specified by the market administrator that is no more than 8 cents per cwt with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.43(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1005.60(h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

3. Section 1006.85 is revised to read as follows:

§ 1006.85 Assessment for order administration.

On or before the payment receipt date specified under § 1006.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1007.60(h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

4. Section 1007.85 is revised, to read as follows:

§ 1007.85 Assessment for order administration.

On or before the payment receipt date specified under § 1007.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1007.60(h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

Dated: February 25, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–3846 Filed 2–28–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 216

48 CFR Parts 911 and 952

RIN 1991–AB69

Defense Priorities and Allocations System

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NOPR) amends Department of Energy (DOE) regulations at 10 CFR part 216 which implement DOE's delegated authority under section 101(c) of the Defense Production Actof 1950 (DPA). Section 101(c) of the DPA provides authority to the President of the United States (President) to require the allocation of, or priority performance under contracts or orders relating to, materials and equipment, services, or facilities, in order to maximize domestic energy supplies, if the President makes certain findings. The President's authority under section 101(c) was delegated to the Secretary of Commerce and the Secretary of Energy. The rulemaking would make a number of changes to part 216 to reflect a 1991 amendment of the DPA which broadens the scope of authority in section 101(c). Because DOE does not expect to receive any significant adverse comments, this regulatory action is also being issued as a direct final rule in today's issue of the **Federal Register**.

DATES: Public comments on the amendment proposed herein will be accepted until March 31, 2008.

ADDRESSES: This notice of proposed rulemaking is available and comments may be submitted online at *http://*

www.Regulations.gov. Comments may be submitted by e-mail to *Mike.Soboroff@hq.doe.gov.* Comments may be mailed to: Mike Soboroff, U.S. Department of Energy, Office of Electricity and Energy Assurance, OE–30, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

FOR FURTHER INFORMATION CONTACT: Mike Soboroff at (202) 586–4936 or via e-mail at *Mike.Soboroff@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This NOPR proposes to amend DOE regulations at 10 CFR part 216, which implement DOE's delegated authority under section 101(c) of the DPA. Section 101(c) provides authority to require the allocation of, or priority performance under contracts or orders relating to, materials and equipment, services, or facilities, in order to maximize domestic energy supplies, if DOE and the Department of Commerce make certain findings. The NOPR would make a number of technical changes to part 216 regulations to reflect a 1991 amendment, which broadens the scope of authority in section 101(c), and Executive Order 12919, (June 3, 1994). The NOPR also proposes conforming changes in the Department of Energy Acquisition Regulation at 48 CFR parts 911 and 952.

Today, DOE is also publishing, elsewhere in this issue of the **Federal Register**, a direct final rule that makes changes to the DOE regulations regarding materials allocation and priority performance under contracts or orders to maximize domestic energy supplies. The amendments in the direct final rule are identical to the amendments that are being proposed in this NOPR. As explained in the preamble of the direct final rule, DOE considers these amendments to be non-controversial and unlikely to generate any significant adverse comments. If no significant adverse comments are received by DOE on the amendments, the direct final rule will become effective on the date specified in that rule, and there will be no further action on this proposal. If significant adverse comments are timely received on the direct final rule, the direct final rule will be withdrawn. The public comments will then be addressed in a subsequent final rule based on the rule proposed in this NOPR. Because DOE will not institute a second comment period on this proposed rule, any party interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule amendment, see the information provided in the direct final rule in this issue of the **Federal Register**.

List of Subjects

10 CFR Part 216

Energy, Government contracts, Reporting and recordkeeping requirements, Strategic and critical materials.

48 CFR Part 911

Government procurement.

48 CFR Part 952

Government procurement, Reporting and recordkeeping requirements.

Issued in Washington, DC on February 20, 2008.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Department of Energy.

William N. Bryan,

Deputy Assistant Secretary, Infrastructure Security and Energy Restoration, Department of Energy.

David O. Boyd,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

[FR Doc. E8–3776 Filed 2–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0222; Directorate Identifier 2007–NM–300–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

Due to several crack findings in the area of wing centre box lower aft corner at FR47, this area of structure has been subjected to accomplishment of several inspection Service Bulletins rendered mandatory in accordance with Airworthiness Limitation Items requirement for A300 aircraft and Airworthiness Directive (AD) F–2004–159 for A300–600 aircraft [which corresponds to FAA AD 2005–23–08]. This AD is published * * * in order to control or correct the development of cracks, which could affect the structural integrity of the aircraft.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 31, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, 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://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 this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0222; Directorate Identifier 2007–NM–300–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0150, dated May 22, 2007 [corrected May 23, 2007] (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Due to several crack findings in the area of wing centre box lower aft corner at FR47, this area of structure has been subjected to accomplishment of several inspection Service Bulletins [SBs] rendered mandatory in accordance with Airworthiness Limitation Items requirement for A300 aircraft and Airworthiness Directive (AD) F–2004–159 for A300–600 aircraft [which corresponds to FAA AD 2005–23–08]. This AD is published in order to render mandatory inspection subsequent to accomplishment of repair SB A300–53–0282 or A300[–53]–0291 or A300–57–6069 in the affected area. The SB A300–53–0381, A300–53–0383 and A300–57–6102 define the various configurations for the mandatory [repetitive] inspections to be conducted in order to control or correct the development of cracks [in the center wing box at FR47], which could affect the structural integrity of the aircraft.

The inspections include x-ray, high frequency eddy current, visual, and ultrasonic inspections. Corrective actions include contacting Airbus if any cracking is found, repairing if any cracking is found, and doing other specified actions. The other specified actions include contacting Airbus for oversizing fastener holes, oversizing fastener holes, installing new fasteners, and installing new plugs.

The initial compliance times range from 10,800 flight hours or 23,300 flight cycles, whichever occurs first, to 30,200 flight hours or 33,500 flight cycles, whichever occurs first, after doing the repair, depending on the airplane configuration and inspection area. The repetitive intervals range from 500 flight cycles or 1,100 flight cycles, whichever occurs first, to 45,500 flight cycles or 61,500 flight hours, whichever occurs first, depending on the airplane configuration and inspection area. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A300–53–0381, dated January 15, 2007; A300–53–0383, dated January 11, 2007; and A300–57–6102, dated January 12, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 107 products of U.S. registry. We also estimate that it would take about 22 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $188,320, or $1,760 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2008–0222; Directorate Identifier 2007–NM–300–AD.

Comments Due Date

(a) We must receive comments by March 31, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 and A300–600 series airplanes, certificated in any category, as listed in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airbus Model A300 B2–1C, B2–203 and B2K–3C models, all serial numbers that have been repaired in accordance with Airbus Service Bulletin A300–53–0282.

(2) Airbus Model A300 B4–103, B4–203, and B4–2C, all serial numbers that have been repaired in accordance with Airbus Service Bulletin A300–53–0291.

(3) Airbus Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, C4–605R Variant F, and F4–605R models, all serial numbers that have been repaired in accordance with Airbus Service Bulletin A300–57–6069.

Subject

(d) Air Transport Association (ATA) of America Codes 53 and 57: Fuselage and Wings.

Reason

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

Due to several crack findings in the area of wing centre box lower aft corner at FR47, this area of structure has been subjected to accomplishment of several inspection Service Bulletins [SBs] rendered mandatory in accordance with Airworthiness Limitation Items requirement for A300 aircraft and Airworthiness Directive (AD) F–2004–159 for A300–600 aircraft [which corresponds to FAA AD 2005–23–08]. This AD is published in order to render mandatory an inspection subsequent to accomplishment of repair SB A300–53–0282 or A300[–53]–0291 or A300–57–6069 in the affected area. The SB A300–53–0381, A300–53–0383 and A300–57–6102 define the various configurations for the mandatory [repetitive] inspections to be conducted in order to control or correct the development of cracks [in the center wing box at FR47], which could affect the structural integrity of the aircraft.

The inspections include x-ray, high frequency eddy current, visual, and ultrasonic inspections. Corrective actions include contacting Airbus if any cracking is found, repairing if any cracking is found, and doing other specified actions. The other specified actions include contacting Airbus for oversizing fastener holes, oversizing fastener holes, installing new fasteners, and installing new plugs.

Actions and Compliance

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

(1) Except as provided by paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(1)(iv), and (f)(1)(v) of this AD, at the threshold defined in paragraph 1.E. ''Compliance'' of the applicable service bulletin listed in Table 1 of this AD and according to the Accomplishment Instructions of the applicable service bulletin, perform all applicable inspections and, before further flight, perform all applicable other specified actions, of FR47 forward fitting vertical splice (including crack stop hole), crack stop hole (depending on cracks length and position), center wing box lower panel, and reinforced parts (internal angle, lower external splice and external fitting).

TABLE 1.—AIRBUS SERVICE BULLETINS

Service Bulletin	Date
A300–53–0381	January 15, 2007.
A300–53–0383	January 11, 2007.
A300–57–6102	January 12, 2007.

(i) Where the tables in 1.E. Compliance of the service bulletins listed in Table 1 of this AD contain compliance times in both flight cycles and flight hours, this AD requires that the corresponding actions be done at the earlier of the flight cycle and flight hour compliance times.

(ii) Where any table in 1.E. Compliance of the service bulletins listed in Table 1 of this AD specifies measurements for LA and LB and the table does not list the unit of measurements, the unit of measurement is millimeters (mm).

(iii) Where any table in 1.E. Compliance of the service bulletins listed in Table 1 of this AD specifies exact measurements in the rows of the table for LA, use the ranges specified in Table 2 of this AD.

TABLE 2.—RANGES FOR LA

Where row of the table specifies—	Use—
LA = 0	LA = 0
LA = 10	0 <LA ≤10mm
LA = 15	10mm <LA ≤15mm
LA = 20	15mm <LA ≤20mm

(iv) Where in 1.E. Compliance of the service bulletins listed in Table 1 of this AD the service bulletins specify a compliance time after receipt of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(v) Where any table in 1.E. Compliance of the service bulletins listed in Table 1 of this AD specifies measurements of LA >40mm, this AD requires that the corresponding action be done if LA ≥ to 40mm.

(2) If any crack is detected during any inspection required by paragraph (f)(1) of this AD, before further flight, contact Airbus and repair.

(3) Repeat the actions specified in paragraph (f)(1) of this AD at the intervals defined in paragraph 1.E. ''Compliance'' of the applicable service bulletin listed in Table 1 of this AD and according to the Accomplishment Instructions of the applicable service bulletin, except as provided by paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), and (f)(1)(v) of this AD.

(4) Within 30 days after doing the inspection required by paragraph (f)(1) of this AD or within 30 days after the effective date of this AD, whichever occurs later, report the first inspection results, whatever they may be, to Airbus as specified in the applicable service bulletin listed in Table 1 of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: The MCAI and service bulletin did not provide adequate descriptions for certain compliance times. We have clarified the compliance times in paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(1)(iv), and (f)(1)(v) of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0150, dated May 22, 2007 [corrected May 23, 2007], and the Airbus Service Bulletins listed in Table 1 of this AD, for related information.

Issued in Renton, Washington, on February 21, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3823 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0135; Directorate Identifier 2007–NM–345–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 Airplanes Equipped with an Auxiliary Fuel Tank System Installed in Accordance with Supplemental Type Certificate (STC) SA00404AT

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Short Brothers Model SD3–60 airplanes. This proposed AD would require deactivation of auxiliary fuel tank systems installed in accordance with Supplemental Type Certificate (STC) SA00404AT. This proposed AD results from fuel tank system review requirements done in accordance with Special Federal Aviation Regulation No. 88 (SFAR 88), which identified potential unsafe conditions. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by April 14, 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://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Bosak, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0135; Directorate Identifier 2007–NM–345–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC) design approval) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to design approval holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Supplemental Type Certificate (STC) SA00404AT for Atlantic Reconnaissance Auxiliary Fuel Tank System

The auxiliary fuel tank system STC consists of two double-wall aluminum auxiliary fuel tanks having electrical fuel quantity indication systems (FQIS), flight deck control and annunciation panels, float level switches, valves and venting systems, and electrical wire connections and bonding methods. Atlantic Reconnaissance, the STC holder, has not complied with the requirements of SFAR 88, paragraph 2. The requirements of that paragraph include providing a safety review, and providing any necessary design changes and maintenance and inspection instructions to preclude the existence or development of an ignition source within the fuel tank system of the airplane.

FAA's Findings

Atlantic Reconnaissance has not provided the design or service information required under SFAR 88 that would lead the FAA to make a finding of compliance; therefore, we must mandate the deactivation of all Atlantic Reconnaissance auxiliary fuel tank systems installed in accordance with STC SA00404AT.

If operators do not wish to deactivate their auxiliary fuel tanks, we will consider requests for alternative methods of compliance (AMOCs).

Once an operator has deactivated the tank as required by this proposed AD, the operator might wish to remove the tank. This would require a separate design approval, if an approved tank removal procedure does not exist.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing this AD, which would require deactivation to prevent usage of the auxiliary fuel tank system installed in accordance with STC SA00404AT.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for coordinated implementation of these regulations and this proposed AD, we are using this same compliance date in this proposed AD.

Costs of Compliance

The following table provides the estimated costs for the 1 U.S.-registered airplane to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Fleet cost
Report	1	$80	None	$80
Preparation of tank deactivation procedure	80	80	None	6,400
Physical tank deactivation	30	80	$1,200	3,600

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers PLC: Docket No. FAA–2008–0135; Directorate Identifier 2007–NM–345–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 14, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Short Brothers Model SD3–60 airplanes, certificated in any category and equipped with an auxiliary fuel tank system installed in accordance with Supplemental Type Certificate SA00404AT.

Unsafe Condition

(d) This AD results from fuel tank system review requirements done in accordance with Special Federal Aviation Regulation No. 88 (SFAR 88), which were not conducted by the STC holder, for identification of potential unsafe conditions and corrective actions. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

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

Report

(f) Within 45 days after the effective date of this AD, submit a report to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The report must include the information listed in paragraphs (f)(1) and (f)(2) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD,

and assigned OMB Control Number 2120–0056.

(1) The airplane registration and serial number.

(2) The usage frequency in terms of total number of flights per year and total number of flights per year for which the auxiliary fuel tank system is used.

Prevent Usage of Auxiliary Fuel Tank

(g) Before December 16, 2008, deactivate the auxiliary fuel tank system, in accordance with a deactivation procedure approved by the Manager of the Atlanta ACO. Any auxiliary fuel tank system component that remains on the airplane must be secured and must have no effect on the continued operational safety and airworthiness of the airplane. Deactivation may not result in the need for additional Instructions for Continued Airworthiness (ICA).

Note 1: Appendix A of this AD provides criteria that must be included in the deactivation procedure. The proposed deactivation procedures should be submitted to the Atlanta ACO as soon as possible to ensure timely review and approval, prior to implementation.

Note 2: For technical information, contact Robert Bosak, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 460, Atlanta, Georgia 30349; telephone (770) 703–6094; fax (770) 703–6097.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Appendix A—Deactivation Criteria

The auxiliary fuel tank system deactivation procedure required by paragraph (g) of this AD must address the following actions.

(1) Permanently drain the auxiliary fuel tank system tanks, and clear them of fuel vapors to eliminate the possibility of out-gassing of fuel vapors from the emptied auxiliary tank.

(2) Disconnect all auxiliary fuel tank system electrical connections from the fuel quantity indication system (FQIS), float, pressure and transfer valves and switches, and all other electrical connections required for auxiliary fuel tank system operation, and stow them at the auxiliary fuel tank interface.

(3) Disconnect all auxiliary fuel tank system fuel supply and fuel vent plumbing interfaces with airplane original equipment manufacturer (OEM) fuel tanks, cap them at the airplane tank side, and secure them. All disconnected auxiliary fuel tank system vent systems must not alter the OEM fuel tank vent system configuration or performance. All empty auxiliary fuel tank system tanks must be vented to eliminate the possibility of structural deformation during cabin decompression. The configuration must not permit the introduction of fuel vapor into any compartments of the airplane.

(4) Pull and collar all circuit breakers used to operate the auxiliary fuel tank system.

(5) Revise the weight and balance document, if required, and obtain FAA approval for any changes to the weight and balance document.

(6) Amend the applicable sections of the applicable Airplane Flight Manual (AFM) to indicate that the auxiliary fuel tank system is deactivated. Remove auxiliary fuel tank system operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM. Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary fuel tank system is deactivated. The AFM revisions specified in this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(7) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary fuel tank system maintenance procedures.

(8) After the auxiliary fuel tank system is deactivated, accomplish procedures such as leak checks, pressure checks, and functional checks deemed necessary before returning the airplane to service. These procedures must include verification that the basic airplane OEM FQIS, fuel distribution, and fuel venting systems function properly and have not been adversely affected by deactivation of the auxiliary fuel tank system.

(9) Include with the proposed deactivation procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation of the auxiliary fuel tank system and return of the airplane to service.

Issued in Renton, Washington, on February 21, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3825 Filed 2–28–08; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2510

RIN 1210–AB02

Amendment of Regulation Relating to Definition of ''Plan Assets''—Participant Contributions

AGENCY: Employee Benefits Security Division, Department of Labor.

ACTION: Proposed rule.

SUMMARY: This document would, upon adoption, establish a safe harbor period of 7 business days during which amounts that an employer has received from employees or withheld from wages for contribution to employee benefit plans with fewer than 100 participants would not constitute ''plan assets'' for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the related prohibited transaction provisions of the Internal Revenue Code. This amendment would provide greater certainty concerning when participant contributions held by an employer do not constitute ''plan assets.'' The proposed rule, if adopted, would affect the sponsors and fiduciaries of contributory group welfare and pension plans covered by ERISA, including 401(k) plans, as well as the participants and beneficiaries covered by such plans and recordkeepers, and other service providers to such plans.

DATES: Written comments on the proposed amendment should be received by the Department on or before April 29, 2008.

ADDRESSES: To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically to *www.regulations.gov* (follow instructions for submission of comments) or *e-ORI@dol.gov*. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attn: Participant Contribution Regulation Safe Harbor. All comments will be available to the public, without charge, online at *www.regulations.gov* and *www.dol.gov/ebsa,* and at the Public Disclosure Room, Room N–1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Janet A. Walters, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, (202) 693–8510. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

A. Background

In 1988, the Department of Labor (the Department) published a final rule (29 CFR 2510.3–102) in the **Federal Register** (53 FR 17628, May 17, 1988), defining

when certain monies that a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan are ''plan assets'' for purposes of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code (the Code).[1] The 1988 regulation provided that the assets of a plan included amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his or her wages by an employer, for contribution to a plan, as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets, but in no event to exceed 90 days from the date on which such amounts are received or withheld by the employer. In 1996, the Department published in the **Federal Register** (61 FR 41220, August 7, 1996), amendments to the 1988 regulation modifying the outside limit beyond which participant contributions to a pension plan become plan assets. Under the 1996 amendments, the outer limit for participant contributions to a pension plan was changed to the 15th business day of the month following the month in which participant contributions are received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 15th business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages). The general rule—providing that amounts paid to or withheld by an employer become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets—did not change. The maximum time period applicable to welfare plans also did not change as a result of the 1996 amendments.

In the course of investigations of 401(k) and other contributory pension plans and in discussions with representatives of employers, plan administrators, consultants and others, it is commonly represented to the Department that, while efforts have been made to clarify the application of the general rule (i.e., participant contributions become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets),[2] many employers, as well as their advisers, continue to be uncertain as to how soon they must forward these contributions to the plan in order to avoid the requirements associated with holding plan assets. At the same time, the Department devotes significant enforcement resources to cases involving delinquent employee contributions and the vast majority of applications under the Department's Voluntary Fiduciary Correction Program involve delinquent employee contribution violations.[3]

The Department believes that it is in the interest of both plan sponsors and plan participants and beneficiaries to amend the participant contribution regulation to provide a higher degree of compliance certainty with respect to when an employer has made timely deposits of participant contributions to the plan. In this regard, the Department proposes a safe harbor under which participant contributions will be considered to have been deposited with the plan in a timely fashion when such contributions are deposited within 7 business days. The Department believes that the adoption of such a safe harbor affords certainty to employers receiving participant contributions regarding the status of such funds. At the same time, the safe harbor would protect participants by encouraging employers to deposit participant contributions with plans within the safe harbor period.

Under the proposed safe harbor, participant contributions to a pension or welfare benefit plan with fewer than 100 participants at the beginning of the plan year will be treated as having been made to the plan in accordance with the general rule (i.e., on the earliest date on which such contributions can reasonably be segregated from the employer's general assets) when contributions are deposited with the plan no later than the 7th business day following the day on which such amount is received by the employer (in the case of amounts that a participant or beneficiary pays to an employer) or the 7th business day following the day on which such amount would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages). As under the current regulation, participant contributions will be considered deposited when placed in an account of the plan, without regard to whether the contributed amounts have been allocated to specific participants or investments of such participants.

In attempting to define the appropriate period for a safe harbor, the Department reviewed data collected in the course of its investigations of possible failures to deposit participant contributions in a timely fashion. These data indicate that smaller plans, typically need more time than larger plans to segregate participant contributions from their general assets. In this regard, the data indicates that on average, employers with small plans—defined for purposes of this regulation as employers sponsoring plans with fewer than 100 participants—are capable of depositing participant contributions with their plans, on a consistent basis, by the 7th business day following the date of receipt or withholding. On the basis of this data, the Department concluded that adoption of a ''7-business day'' safe harbor rule would allow most employers with small plans to take advantage of the safe harbor and, thereby, benefit from the certainty of compliance afforded by the proposed regulation. Moreover, the Department believes that adoption of a ''7-business day'' safe harbor rule would present little, if any, additional risk to plan participants and beneficiaries. In this regard, the Department believes that most employers with small plans that are taking longer than 7 business days to deposit participant contributions will expedite the depositing of those contributions to take advantage of the safe harbor. The Department also believes that where participant contributions are being made by employers with small plans within a period shorter than 7 business days, few employers with small plans will incur the costs attendant to modifying their payroll system in order to hold such contributions for a few additional days. The Department invites comments on the proposed safe harbor.

In the case of employers sponsoring large plans—defined for purposes of this regulation as employers sponsoring plans with 100 or more participants—it is unclear if these plans have the same need for a safe harbor period within which participant contributions should be required to be deposited with a plan. The Department intends, as part of the final regulation, to include a safe harbor for employers with large plans if commenters provide information and data sufficient to evaluate the current contribution practices of such

[1] While the rule effects the application of ERISA and Code provisions, it has no implications for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 644. *See* paragraph (a) of 29 CFR 2510.3–102.

[2] *See* preamble to Final Rule, 61 FR 41220, 41223 (August 7, 1996). *See also* Field Assistance Bulletin 2003–2 (May 7, 2003).

[3] Since the inception of the Voluntary Fiduciary Correction Program in 2000, close to 90% of the applications have involved delinquent participant contribution violations.

employers and to conclude that it is a net benefit to such employers and participants to have a safe harbor. In this regard, the Department specifically requests information concerning the time period within which employers with large plans deposit participant contributions following the date of receipt or withholding. The Department also requests comments on the need for a safe harbor, and the corresponding size of the plans for which there appears to be a need for such a safe harbor. The Department proposes to amend paragraph (f) of 2510.3–102 to update the examples and illustrate the safe harbor and invites comments on the amendment of paragraph (f) of 2510.3–102.

As proposed, the safe harbor would be available for both participant contributions to pension benefit plans and participant contributions to welfare benefit plans.

The Department also is proposing to amend paragraph (a)(1) of 2510.3–102 to extend the application of the regulation to amounts paid by a participant or beneficiary or withheld by an employer from a participant's wages for purposes of repaying a participant's loan (regardless of plan size). In Advisory Opinion 2002–02A (May 17, 2002),[4] the Department expressed the view that, while the participant contribution regulation, as drafted, did not apply to participant loan repayments, the principles for determining when participant loan repayments become plan assets generally are the same as those specified in the participant contribution regulation. The Department, therefore, concluded that participant loan repayments made to an employer for purposes of transmittal to the plan, or withheld from employee wages by the employer for transmittal to the plan, become plan assets on the earliest date on which such repayments can reasonably be segregated from the employer's general assets.

The proposed amendment to paragraph (a)(1) would adopt the principles applicable to determining when participant loan repayments constitute plan assets. This proposal also would serve to extend the availability of the 7-business day safe harbor to loan repayments to plans with fewer than 100 participants, relief that would not otherwise be available in the absence of this proposal.

[4] This advisory opinion may be accessed at *http://www.dol.gov/ebsa/regs/aos/ao2002-02a.html* (May 17, 2002).

C. Effective Date and Enforcement Policy

The Department contemplates making the safe harbor and the proposed amendments to paragraph (a)(1) and (f)(1) of 2510.3–102 effective on the date of publication of the final regulation in the **Federal Register**. The safe harbor will provide a means for certain employers to assure themselves that they are not holding plan assets, without having to determine that participant contributions were forwarded to the plan at the earliest reasonable date. By providing such assurance, the safe harbor will grant or recognize an exemption or relieve a restriction within the meaning of 5 U.S.C. 553(d)(1). Moreover, the safe harbor will encourage certain employers to take immediate steps to review their systems and, if necessary, shorten the period within which participant contributions are forwarded to the plan in order to take advantage of the safe harbor and, thereby, extend the benefit of earlier contributions to participants and beneficiaries earlier than might otherwise occur with a deferred effective date. In this regard, the Department invites comments concerning the effective date of the final safe harbor amendment.

Before the effective date of the final safe harbor regulation, the Department will not assert a violation of ERISA based on the general rule that participant contributions or loan repayments become plan assets on the earliest date on which they can reasonably be segregated from the employer's general assets, so long as such contributions or repayments to a plan with fewer than 100 participants have been transferred to the plan in accordance with the 7-business day safe harbor period in this proposal.

D. Regulatory Impact Analysis

Summary

The proposed safe harbor will provide employers with increased certainty that their remittance practices, to the extent that they meet the safe harbor time limits, will be deemed to comply with the regulatory requirement that participant contributions be forwarded to the plan on the earliest date on which they can reasonably be segregated from the employer's general assets. This increased certainty will produce benefits to employers, participants, and beneficiaries by reducing disputes over compliance and allowing easier oversight of remittance practices. In addition, the tendency to conform to the safe harbor time limit may serve to reduce the existing variations in remittance times, providing increased certainty for employers and other plan sponsors and participants. In the case of employers that expedite their remittance practices to take advantage of the safe harbor, plan participants may derive an additional benefit in the form of increased investment earnings. The Department estimates that accelerated remittances could result in $34.5 million in additional income to be credited annually to participant accounts under the plans if no employers choose to delay remittances in response to the safe harbor and $15 million annually even if all eligible employers were to delay remittances to the full duration of the safe harbor.

Costs attendant to the proposed safe harbor arise principally from one-time start-up costs to alter remittance practices to conform to the safe harbor and from any additional on-going administrative costs attendant to quicker, and possibly more frequent, transmissions of participant contributions from employers to plans. The Department believes that the costs likely to arise from either source will be small and that the benefits of this regulation will justify its costs.[5]

The data, methodology, and assumptions used in developing these estimates are more fully described below in connection with the Department's analyses under Executive Order 12866 and the Regulatory Flexibility Act (RFA).

Executive Order 12866 Statement

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the

[5] A key factor limiting the cost of this regulation is that it requires no action of the part of any employer, plan, or participant; it creates an incentive for employers to remit participant contributions on more regular schedules.

rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the Department has undertaken an analysis of the costs and benefits of the proposed regulation. OMB has reviewed this regulatory action.

This proposal would establish a safe harbor rule for employers' timely remittance of participant contributions to employee benefit plans. The safe harbor, as proposed, is available only to employer remittances of participant contributions to plans with fewer than 100 participants. Under the proposed rule, employers that remit participant contributions within 7 business days after the date on which received or withheld would be deemed to have complied with the requirement of 29 CFR 2510.3–102 to treat participant contributions as plan assets ''as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets.''

This rule is likely to encourage some eligible employers whose current remittance practices involve holding participant contributions for longer than 7 business days to change their remittance practices to conform to the 7-business day time limit. Because the rule is not mandatory and changes in remittance practices are likely to entail some cost to employers, only those employers that believe they will benefit from the protection of the safe harbor will elect to take advantage of the safe harbor.

Based on data from the Form 5500 filings for the year 2004, which is the most recent available data, the Department estimates that the proposed safe harbor would be available to an estimated 311,000 single employer defined contributions plans with fewer than 100 participants.[6] These plans hold approximately 18% of the $2.2 trillion held by all contributory single employer defined contribution plans.[7]

In order to analyze the potential economic impact of this proposal, the Department examined data from a representative sample of contributory single employer defined contribution pension plans.[8] Using these data, the Department analyzed the current remittance practices of the employers sponsoring these plans, extrapolated the results to characterize the remittance practices of plans in general, and projected the potential impact of this safe harbor rule. The Department considered both the extent to which data on remittance records of these plans reveal a preference or standard practice regarding timing, and the extent to which changes in the length of time between withholding and receipt by the plan might result in an increase (or decrease) in investment income to participants' accounts.

The sample data indicate that employers' remittance patterns for participant contributions to plans vary substantially, both across payroll periods of an individual employer and across employers. Based on analysis of these data, the Department has concluded that most employers sponsoring plans with fewer than 100 participants will not find it difficult to take advantage of the proposed safe harbor.[9] Twenty-one percent of all plans with fewer than 100 participants for which data was obtained had remittance times within 7 business days for all pay periods; an additional 69% remitted participant contributions for at least some of the employer's payroll periods within 7 business days. Based on this data, the Department has concluded that a 7-business day safe harbor would be achievable for a large majority of the contributory plans and would reduce the time taken to make at least some deposits to a substantial proportion of contributory plans. The Department recognizes that to take advantage of the safe harbor, many of the firms that currently remit employee contributions within 7 business days for some, but not all, pay periods would have to change their remittance schedule from monthly remittances to remittances following each weekly or biweekly pay period.

The Department anticipates that a substantial number of employers that currently take longer than 7 business days to remit participant contributions will speed up their remittances in order to take advantage of the safe harbor. At the same time, it is possible that some employers that currently remit participant contributions more quickly than the proposed safe harbor rule will slow their remittances due to the safe harbor. Such behavior might benefit the remitting employers by reducing their administrative costs and by increasing the time they are holding the remittances. However, the Department believes that only a small fraction of that group, if any, would elect to incur the expense and risk of negative participant reaction that might arise from slowing down their remittances to take full advantage of the safe harbor time period, especially because the amount of the potential income transfer on a per-plan basis is very small.[10] The potential consequences of reliance on the safe harbor for earnings on participant contributions are further described in the Benefits section below.

Costs

On the basis of information from EBSA's Employee Contributions Project 2004 Baseline Project (''ECP''),[11] the Department believes that an estimated 21% of eligible single employer defined contribution plans (approximately 64,000 plans) currently receive all participant contributions within 7 or fewer business days. The employers that sponsor such plans would not have to modify their current systems and, as a

[6] While the safe harbor is available to contributory defined benefit plans and contributory multiemployer defined contribution plans, the number of such plans affected by the regulation is very small. The safe harbor also is available to contributory welfare benefit plans; however, most of these plans are not affected by the regulation, because they are not required to comply with ERISA's trust requirement. Based on available data, contributory single employer defined contribution plans constitute about 97 % of plans that could benefit from the safe harbor. Accordingly, the Department has focused its regulatory impact analysis on contributory single employer defined contribution plans and believes that focusing on such plans provides highly meaningful data for estimating potential impacts.

[7] This percentage is based on an EBSA tabulation of its 2004 Form 5500 research file.

[8] The sample data used in this analysis comes from data collected in EBSA Employee Contribution Project 2004 Baseline Project, which was undertaken by the Department in order to develop a better understanding of current employer practices regarding contributory individual account pension plans. The Project was based on a representative sample of 487 contributory, single employer defined contribution plans. In 2004, the Department collected detailed data on the remittance practices of the employers sponsoring the sample plans. The collected data covered the 12-month period preceding the date in 2004 on which EBSA interviewed the employer-sponsor and included, for example, the exact dates on which wages were withheld from employees and the exact dates on which participant contributions were deposited in the plan's accounts. For purposes of this analysis, the sample data has been weighted to the 2004 Form 5500 universe of contributory, single employer defined contribution plans.

[9] The data indicate that 90% of plans with fewer than 100 participants currently receive at least some participant contributions within 7 business days after withholding.

[10] The employers having the most to gain from delaying remittances to the full extent that would satisfy the safe harbor would be those who currently remit employee contributions most promptly. For example, an employer that currently remits contributions on the day they are received or withheld and responds to the safe harbor by delaying remittances to the 7-business day safe harbor limit would gain use of the funds for 7 business days. At an annual rate of 8%, the value of the float gain would be less than one-quarter of one percent of employee contributions.

[11] See fn. 8, supra.

result, would incur no additional costs to obtain the compliance certainty available under the safe harbor provisions. On the other hand, 10% of the eligible plans (approximately 32,000 plans) consistently receive participant contributions later than 7 business days from the date of the employer's receipt or withholding.[12] The remaining 69% of the eligible plans (approximately 215,000 plans) are estimated to receive participant contributions within 7 business days for some, but not all, of their payroll dates, and the Department assumes that these employers would have to make only minor modifications in order to take advantage of the safe harbor.

In deciding whether to rely on the safe harbor, employers will weigh the benefits of compliance certainty against the cost of changes needed to make quicker and possibly more frequent deposits. Because the cost of modifying remittance practices or systems will depend, to some extent, on the length of time currently taken to make remittances, the Department believes it is reasonable to assume that those employers currently transmitting some of the participant contributions within an 8 to 14 day period may find it less expensive to modify their practices to take advantage of the safe harbor than employers currently operating under remittance practices or systems with longer delays. The cost to the former group of employers to shorten the remittance period to conform to the safe harbor may be modest or negligible. However, the Department has no current, reliable data concerning the cost of required changes relating to shortening the remittance period for participant contributions and therefore did not attempt to estimate that cost. Because conformance to the safe harbor is voluntary, the Department believes that the transition cost for employers electing to conform will be offset by elimination of the current cost attributable to existing uncertainty about how to meet the ''earliest date'' standard of § 2510.3–102. Those employers that already conform will not incur any costs, but will benefit from the safe harbor. The Department specifically invites information and comments on this point.

Benefits

The rule will produce benefits for both participants and employers in the form of increased certainty regarding timely remittance of participant contributions to plans. This increased certainty will decrease costs for both employers and participants by reducing the need to determine, on an individualized basis in light of particular circumstances, whether timely remittances have been made. Employers that conform to the safe harbor will also benefit by obviating the need to determine and monitor how quickly participant contributions can be segregated from their general assets. They also will face a reduced risk of challenges to their particular remittance practices from participants and the Department.

In the case of plan sponsors that elect to expedite the deposit of participant contributions to take advantage of the safe harbor, contributions will be credited to the investment accounts earlier than previously and will be able to accrue investment earnings for a longer time period. The Department has calculated these potential investment gains, but acknowledges that lack of knowledge about how employers will react to a regulatory safe harbor renders these estimates uncertain. If, for illustration, the safe harbor results in a 7-business day remittance of all remittances that are currently taking more than 7 business days, then the regulatory safe harbor would result in an estimated additional $34.5 million in investment earning for participants each year.[13] These potential gains would be reduced by any losses that would occur due to any slow-down in response to the safe harbor by employers with currently quicker remittance times. The Department, however, believes it unlikely that a significant fraction of employers would slow down remittances for the sole purpose of taking advantage of the minor[14] income transfer resulting from retaining contributions for the full safe harbor period.[15]

Alternatives Considered

The Department's consideration of alternatives primarily focused on striking the right balance between a time frame that is not so short as to foreclose any meaningful number of plans from taking advantage of the safe harbor and a time frame that is not so long as to create financial incentives for employers to hold participant contributions longer that necessary, taking into account current practices. Among others, the Department considered the following two alternative time periods: (1) A 5-business day safe harbor, and (2) a 10-business day safe harbor. After reviewing the available data, however, the Department rejected these alternatives in favor of the proposed 7-business day safe harbor for the reasons discussed below.

The 7-business day safe harbor is likely to encourage eligible employers whose remittance practices involve holding participant contributions for longer than 7 business days to change their remittance practices to conform to the 7-business day safe harbor time limit. Currently, only 12 percent of the eligible single employer defined contribution plans consistently receive remittances within 5 business days, compared to the 21 percent that consistently receive remittances within 7 business days. Although a 5-business day safe harbor could provide higher potential gains ($40.5 million at the highest maximum estimate) and lower potential losses ($12.2 million) to participants if employers choose to conform to the safe harbor, the shorter remittance period would likely make it unattractive to many employers, because the shorter safe harbor would increase the disparity from current practices. Any employer anticipating large costs of compliance with the safe harbor might not be convinced that its benefits would be sufficient to justify changing its remittance practices. If, as a result, too few employers adopt the safe harbor, the regulation might fail to produce the intended benefit that would flow from the certainty of uniform remittance practices on which employers and participants can rely.

The 10-business day safe harbor, in contrast, was considered to represent little compliance burden, since currently 29 percent of eligible single employer defined contribution plans receive remittances consistently within 10 business days and 94 percent receive remittances that quickly for at least some pay periods. However, because a large proportion of eligible plans

[12] For purposes of this analysis, it is assumed that the sponsors of these plans would have to make significant modification to their remittance practices to take advantage of the safe harbor.

[13] The Department has assumed an average annual return of 8.3% for pension plan assets. This rate is an estimate of the long-term rate of return on defined contribution plan assets implicit in the flow of funds account of the Federal Reserve.

[14] The employers having the most to gain from delaying remittances to the full extent that would satisfy the safe harbor would be those who currently remit employee contributions most promptly. For example, an employer that currently remits contributions on the day they are withheld and responds to the safe harbor by delaying remittances to the 7-business day safe harbor limit would gain use of the funds for 7 business days. Valuing the float gain at an annual rate of 8%, its value would be less than one-quarter of one percent of employee contributions.

[15] If all employers that currently remit contributions in fewer than 7 days were to slow down their remittance times to 7 days, participants might experience transfer losses of as much as $19.5 million annually, but would nonetheless likely experience an aggregate net gain of $14 million.

currently receive some or all participant contributions more quickly, a safe harbor of 10 business days would entail some risk of producing a net aggregate loss of investment income to participant accounts as compared with current practice.[16]

As part of the ECP, EBSA investigators also made judgments as to reasonable periods for each remittance. These data show that while remittance within 5 business days was consistently reasonable for 48% of eligible plans, that percentage increased to 61% by extending the reasonable period to 7 business days. Thus, the two-day longer reasonable period also has the advantage of being consistently reasonable for a clear majority of eligible plans. A further extension of the safe harbor to 10 business days would further increase (to 81%) the percentage of plans for which the safe harbor is consistently reasonable, but was not proposed because it would risk producing net investment losses for participants if employers were to delay remittances to the full extent permitted under the safe harbor.[17]

Taking into account the potential costs and benefits presented by the various alternative safe harbors, the Department believes that the proposed 7-business day safe harbor would best balance the current practices of employers and the potential costs to them of change, as well as the value to participants of encouraging quicker transmission of contributions. As explained earlier, the available data indicate that employers sponsoring plans with fewer than 100 participants are generally able to transmit participant contributions within 7 business days of withholding or receipt. Furthermore, the impact of a 7-business day safe harbor is anticipated to be generally favorable to participants and to result in aggregate net gains to their accounts, even in the unlikely event that all employers that currently remit contributions more quickly than 7 business days were to slow down their remittances to the maximum duration of the safe harbor.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public can clearly understand the Department's collection instructions and provide the requested information in the desired format and that the Department minimizes the public's reporting burden (in both time and financial resources) and can properly assess the impact of its collection requirements.

On August 7, 1996 (61 FR 41220), the Department published in the **Federal Register** a proposed amendment to the Regulation Relating to a Definition of ''Plan Assets''—Participant Contributions (29 CFR 2510.3–102), and simultaneously submitted an information collection request (ICR) to the Office of Management and Budget (OMB) on the paperwork requirements arising from the proposal. This amendment created a procedure through which an employer could extend the maximum period for depositing participant contributions by an additional 10 business days with respect to participant contributions for a single month. OMB approved the ICR under OMB control number 1210–0100. The current proposed amendment of § 2510.3–102 contained in this notice does not propose or make any change to the extension procedure or add any other information collection, and, accordingly, the Department does not intend to submit this proposal to OMB for review under the PRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.[18] The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and satisfying certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

EBSA has preliminarily determined that while this rule will impact a substantial number of small entities, it will not have a significant economic impact on these entities. As explained above, the provision being added to the regulation is a safe harbor, compliance with which is wholly voluntary on the part of the employer. Because the proposal would create a safe harbor, rather than a mandatory rule, it is unlikely that any employer will elect to take advantage of the safe harbor if the employer concludes that the benefits of complying with the safe harbor time limit do not exceed the costs of such compliance. Therefore, the Department believes that most of these small plans

[16] If all currently faster remittances were delayed until the tenth business day, annual investment earnings credited to participant accounts could be reduced by as much as $32.3 million. Accelerating all currently slower remittances to the tenth business day would increase such earnings by $27.4 million resulting in an aggregate annual loss of $4.9 million.

[17] EBSA estimates that if the safe harbor were set at 10 business days, then potential losses to participants of $32 million would exceed potential gains of $27 million.

[18] The Department consulted with the Small Business Administration in making this determination as required by 5 U.S.C. 603(c) and 13 CFR 121.903(c).

will elect to take advantage of the safe harbor, provided that doing so does not significantly increase their costs or that any cost increase is offset by reductions in other administrative costs attendant to compliance uncertainty. The Department specifically requests comments on the potential impact of the proposed rule on small entities.

Small Business Regulatory Enforcement Fairness Act

The proposed rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and if finalized will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million or more.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would not have federalism implications because it has no 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. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this proposed rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

Statutory Authority

This regulation is proposed pursuant to the authority in section 505 of ERISA (Pub. L. 93–406, 88 Stat. 894; 29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978), effective December 31, 1978 (44 FR 1065, January 3, 1979), 3 CFR 1978 Comp. 332, and under Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003).

List of Subjects in 29 CFR Part 2510

Employee benefit plans, Employee Retirement Income Security Act, Pensions, Plan assets.

Accordingly, 29 CFR part 2510 is proposed to be amended as follows:

PART 2510—DEFINITION OF TERMS USED IN SUBCHAPTERS C, D, E, F, AND G OF THIS CHAPTER

1. The authority citation for part 2510 continues to read as follows:

Authority: 29 U.S.C. 1002(2), 1002(21), 1002(37), 1002(38), 1002(40), 1031, and 1135; Secretary of Labor's Order 1–2003, 68 FR 5374; Sec. 2510.3–101 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275, and 29 U.S.C. 1135 note. Sec. 2510.3–102 also issued under sec. 102 of Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp., p. 332 and E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp., p. 275. Section 2510.3–38 is also issued under Sec. 1, Pub. L. 105–72, 111 Stat. 1457.

2. Revise § 2510.3–102, paragraphs (a) and (f), to read as follows:

§ 2510.3–102 Definition of ''plan assets''—participant contributions.

(a)(1) *General rule.* For purposes of subtitle A and parts 1 and 4 of subtitle B of title 1 of ERISA and section 4975 of the Internal Revenue Code only (but without any implication for and may not be relied upon to bar criminal prosecutions under 18 U.S.C. 664), the assets of the plan include amounts (other than union dues) that a participant or beneficiary pays to an employer, or amounts that a participant has withheld from his wages by an employer, for contribution or repayment of a participant loan to the plan, as of the earliest date on which such contributions or repayments can reasonably be segregated from the employer's general assets.

(2) *Safe harbor.* For purposes of paragraph (a)(1) of this section, in the case of a plan with fewer than 100 participants at the beginning of the plan year, any amount deposited with such plan not later than the 7th business day following the day on which such amount is received by the employer (in the case of amounts that a participant or beneficiary pays to an employer), or the 7th business day following the day on which such amount would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages), shall be deemed to be contributed or repaid to such plan on the earliest date on which such contributions or participant loan repayments can reasonably be segregated from the employer's general assets.

* * * * *

(f) Examples. The requirements of this section are illustrated by the following examples:

(1) Employer A sponsors a 401(k) plan. There are 30 participants in the 401(k) plan. A has one payroll period for its employees and uses an outside payroll processing service to pay employee wages and process deductions. A has established a system under which the payroll processing service provides payroll deduction information to A within 1 business day after the issuance of paychecks. A checks this information for accuracy within 5 business days and then forwards the withheld employee contributions to the plan. The amount of the total withheld employee contributions is deposited with the trust that is maintained under the plan on the 7th business day following the date on which the employees are paid. Under the safe harbor in paragraph (a)(2) of this section, when the participant contributions are deposited with the plan on the 7th business day following a pay date, the participant contributions are deemed to be contributed to the plan on the earliest date on which such contributions can reasonably be segregated from A's general assets.

(2) Employer B is a large national corporation which sponsors a 401(k) plan with 600 participants. B has several payroll centers and uses an outside payroll processing service to pay employee wages and process deductions. Each payroll center has a different pay period. Each center maintains separate accounts on its books for purposes of accounting for that center's payroll deductions and provides the outside payroll processor the data necessary to prepare employee paychecks and process deductions. The payroll processing service issues the employees' paychecks and deducts all payroll taxes and elective employee deductions. The payroll processing service forwards the employee payroll deduction data to B on the date of issuance of paychecks. B checks this data for accuracy and transmits this data along with the employee 401(k) deferral funds to the plan's investment firm

within 3 business days. The plan's investment firm deposits the employee 401(k) deferral funds into the plan on the day received from B. The assets of B's 401(k) plan would include the participant contributions no later than 3 business days after the issuance of paychecks.

(3) Employer C sponsors a self-insured contributory group health plan with 90 participants. Several former employees have elected, pursuant to the provisions of ERISA section 602, 29 U.S.C. 1162, to pay C for continuation of their coverage under the plan. These checks arrive at various times during the month and are deposited in the employer's general account at bank Z. Under paragraphs (a) and (b) of this section, the assets of the plan include the former employees' payments as soon after the checks have cleared the bank as C could reasonably be expected to segregate the payments from its general assets, but in no event later than 90 days after the date on which the former employees' participant contributions are received by C. If however, C deposits the former employees' payments with the plan no later than the 7th business day following the day on which they are received by C, the former employees' participant contributions will be deemed to be contributed to the plan on the earliest date on which such contributions can reasonably be segregated from C's general assets.

* * * * *

Signed at Washington, DC, this 21st day of February, 2008.

Bradford P. Campbell,

Assistant Secretary, Employee Benefits Security Administration Department of Labor.

[FR Doc. E8–3596 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2007–0051]

RIN 0651–AC18

Changes in Rules Regarding Filing Trademark Correspondence by Express Mail or Under a Certificate of Mailing or Transmission

AGENCY: United States Patent and Trademark Office, Commerce.

ACTIONS: Proposed rule.

SUMMARY: The United States Patent and Trademark Office (''Office'') proposes to amend the Trademark Rules of Practice to provide that the procedures for filing trademark correspondence by Express Mail or under a certificate of mailing or transmission do not apply to certain specified documents for which an electronic form is available in the Trademark Electronic Application System (''TEAS''). The purpose of the rule change is to promote electronic filing, increase efficiency, and improve the quality and integrity of critical data in the Office's automated systems.

DATES: Comments must be received by April 29, 2008 to ensure consideration.

ADDRESSES: The Office prefers that comments be submitted via electronic mail message to *TMMailingRules@uspto.gov.* Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Mary Hannon; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Mary Hannon; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. The comments will be available for public inspection on the Office's Web site at *http://www.uspto.gov,* and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia.

FOR FURTHER INFORMATION: Contact Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (571) 272–9569.

SUPPLEMENTARY INFORMATION: References below to ''the Act,'' ''the Trademark Act,'' or ''the statute'' refer to the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended. References to ''TMEP'' or *''Trademark Manual of Examining Procedure''* refer to the 5th edition, September 2007.

Express Mail Procedure

Section 2.198 of the Trademark Rules of Practice provides a procedure for obtaining a filing date as of the date that correspondence is deposited with the United States Postal Service (''USPS'') as ''Express Mail.'' Currently, § 2.198(a)(1) provides that the Express Mail procedure does not apply to the following documents for which an electronic form is available in TEAS: applications for registration of marks; amendments to allege use under section 1(c) of the Trademark Act; statements of use under section 1(d) of the Act; requests for extension of time to file a statement of use under section 1(d) of the Act; affidavits or declarations of use under section 8 of the Act; renewal applications under section 9 of the Act; and requests to change or correct addresses. If any of these documents are filed by Express Mail, they are given a filing date as of the date of receipt in the Office (Eastern time) rather than the date of deposit with the USPS. These exclusions have been in effect since June 24, 2002. *See* notice at *67 FR 36099 (May 23, 2002*). The Express Mail procedure also does not apply to responses to notices of irregularity under § 7.14 and requests for transformation under § 7.31, pursuant to § 7.4(b)(2).

The Office proposes to amend § 2.198(a)(1) to add exclusions for the following additional documents for which a form is available in TEAS: Preliminary amendments; responses to examining attorneys' Office actions; requests for reconsideration after final action; responses to suspension inquiries or letters of suspension; petitions to revive abandoned applications under 37 CFR 2.66; requests for express abandonment of applications; affidavits or declarations of incontestability under section 15 of the Act; requests for amendment of registrations under section 7(e) of the Act; requests for correction of applicants' mistakes under section 7(h) of the Act; Madrid-related correspondence filed under § 7.11, § 7.14, § 7.21, § 7.28 or § 7.31; appointments or revocations of attorney or domestic representative; and notices of withdrawal of attorney.

The Office further proposes to amend § 7.4 to provide that international applications under § 7.11 and subsequent designations under § 7.21, when filed by mail, will be accorded a filing date as of the date of receipt in the Office (Eastern time) rather than the date of deposit as Express Mail.

Certificate of Mailing or Transmission Procedure

Under 37 CFR 2.197, a ''certificate of mailing or transmission'' procedure exists to avoid lateness due to mail delay. Correspondence is given a filing date as of the date of receipt in the Office, but is considered to be timely even if received after the due date, if the correspondence was: (1) Deposited with the USPS as first class mail or transmitted to the Office by facsimile transmission on or before the due date; and (2) accompanied by a certificate attesting to the date of deposit or transmission. Currently, this procedure may be used for all trademark correspondence except applications for

registration of marks and correspondence related to the Madrid Protocol under §§ 7.11, 7.14, 7.21, 7.23, 7.24 and 7.31. In limited circumstances, certificates of transmission by electronic mail are permissible. *See Trademark Manual of Examining Procedure* (''TMEP'') sections 304.01 and 304.02 regarding the types of trademark correspondence that can be filed by e-mail.

The Office proposes to amend § 2.197(a)(2) to provide that the certificate of mailing and certificate of transmission procedures do not apply to the following documents for which an electronic form is available in TEAS: Amendments to allege use; statements of use; requests for extension of time to file a statement of use; preliminary amendments; responses to examining attorneys' Office actions; requests for reconsideration after final action; responses to suspension inquiries or letters of suspension; petitions to revive abandoned applications under 37 CFR 2.66; requests for express abandonment of applications; affidavits or declarations of use under section 8 of the Act; renewal applications under section 9 of the Act; affidavits or declarations of incontestability under section 15 of the Act; requests for amendment of registrations under section 7(e) of the Act; requests for correction of applicants' mistakes under section 7(h) of the Act; appointments or revocations of attorney or domestic representative; notices of withdrawal of attorney; and requests to change or correct addresses.

Benefits of Proposed Change

The certificate of mailing, certificate of transmission, and Express Mail procedures were created to respond to public concern about the loss of filing dates due to mail delays or loss of documents within the Office. These procedures are no longer necessary because electronic filing provides a better alternative.

Applicants, registrants, and their attorneys can ensure a ''date certain'' for a document by filing through TEAS, which is available 24 hours a day, 7 days a week. Under § 2.195(a)(2), correspondence filed via TEAS is considered to have been filed on the date that the Office receives a complete transmission of the correspondence, regardless of whether that date is a Saturday, Sunday, or a Federal holiday within the District of Columbia.

Unlike Express Mail and certificates of mailing/transmission, TEAS assures filers that the Office actually received the document submitted. When a document is filed electronically, the Office receives it within seconds after filing, and TEAS almost immediately displays a ''Success'' page confirming receipt, which may be printed or copied and pasted into an electronic record for storage. This page provides the filer with evidence of filing should any question ever arise as to the filing date of the document. If the ''Success'' page does not appear within seconds, then the filing was not completed successfully. Thus, no doubt exists as to whether a document was transmitted successfully. TEAS also sends a separate e-mail acknowledgment of receipt that includes a summary of the filed information and general processing information.

TEAS documents are extremely unlikely to be lost or misplaced within the Office. Electronic filing creates an automatic entry of receipt of the filing into the Office's automated system, which prevents improper abandonment or cancellation due to delays in matching papers with files. The Office has experienced very few situations in which parties claim that electronically filed documents have been lost. In fact, in almost all instances in which parties have claimed that electronically filed documents have been lost, the Office has later determined that although the party successfully validated the intended filing, the party never successfully completed the actual electronic transmission process and never got a ''Success'' page.

When a document is filed electronically, the data provided by the applicant is transferred directly into the Office's databases, so very few, if any, data entry errors arise. This assures customers that their application/registration files are complete; and improves the quality, accuracy and completeness of the information available to the public in Office databases.

Because electronic filing eliminates delays caused by mailing, manual data capture and paper processing, TEAS documents are processed more quickly and entered into the automated systems (and therefore made available to Office employees and members of the public who search Office records for conflicting marks) sooner than their paper counterparts. This increases efficiency, reduces pendency, and enables the Office to provide a higher level of customer service to all applicants and registrants. Electronic filing provides a level of consistency, accuracy, and predictability that a paper-based process cannot.

In those rare situations when TEAS is unavailable due to technical problems, mechanisms are in place to obtain a filing date as of the date of the attempted filing. The filer may provide evidence that the filing was attempted through TEAS but TEAS was unavailable due to technical problems, such as a computer screen printout showing receipt of a ''Fatal Error—Access Denied'' error message, or a copy of an e-mail message from the TEAS Help Desk stating that the TEAS application forms were temporarily unavailable. *See* TMEP sections 1711, 1712.01 and 1712.02.

Rule Making Requirements

Executive Order 12866: This rule has been determined not to be significant for purposes of Executive Order 12866.

Administrative Procedure Act: This rule merely involves rules of agency practice and procedure within the meaning of 5 U.S.C. 553(b)(A). Therefore, this rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d). However, the Office has chosen to seek public comment before implementing the rule.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. See 5 U.S.C. 603.

Unfunded Mandates: The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments or the private sector.

Executive Order 13132: This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information in this notice have been reviewed and approved by the OMB under OMB control numbers: 0651–0009, 0651–0054, 0651–0055 and 0651–0056.

The agency is not resubmitting an information collection package to OMB

for its review and approval because the changes in this notice are limited to amending the rules of practice to support further implementation of the Office's Trademark Electronic Application System.

Interested persons are requested to send comments regarding these information collections, including suggestions for reduction of this burden to: (1) The Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office; and (2) Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451 (Attn: Mary Hannon).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the Office proposes to amend parts 2 and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

2. Amend § 2.197 by revising paragraph (a)(2) to read as follows:

§ 2.197 Certificate of mailing or transmission.

(a) * * *

(2) The procedure described in paragraph (a)(1) of this section does not apply to:

(i) Applications for the registration of marks;

(ii) Amendments to allege use under section 1(c) of the Act;

(iii) Statements of use under section 1(d) of the Act;

(iv) Requests for extension of time to file a statement of use under section 1(d) of the Act;

(v) Preliminary amendments;

(vi) Responses to examining attorneys' Office actions;

(vii) Requests for reconsideration after final action;

(viii) Responses to suspension inquiries or letters of suspension;

(ix) Petitions to revive abandoned applications under § 2.66;

(x) Requests for express abandonment of applications;

(xi) Affidavits or declarations of use under section 8 of the Act;

(xii) Renewal applications under section 9 of the Act;

(xiii) Affidavits or declarations of incontestability under section 15 of the Act;

(xiv) Requests for amendment of registrations under section 7(e) of the Act;

(xv) Requests for correction of applicants' mistakes under section 7(h) of the Act;

(xvi) Madrid-related correspondence filed under § 7.11, § 7.14, § 7.21, § 7.23, § 7.24, § 7.28 or § 7.31;

(xvii) Appointments or revocations of attorney or domestic representative;

(xviii) Notices of withdrawal of attorney; and

(xix) Requests to change or correct addresses.

* * * * *

3. Amend § 2.198 by revising paragraphs (a)(1)(v), (vi) and (vii), and adding new paragraphs (a)(1)(viii) through (xix), to read as follows:

§ 2.198 Filing of correspondence by "Express Mail."

(a)(1) * * *

(v) Preliminary amendments;

(vi) Responses to examining attorneys' Office actions;

(vii) Requests for reconsideration after final action;

(viii) Responses to suspension inquiries or letters of suspension;

(ix) Petitions to revive abandoned applications under § 2.66;

(x) Requests for express abandonment of applications;

(xi) Affidavits or declarations of use under section 8 of the Act;

(xii) Renewal applications under section 9 of the Act;

(xiii) Affidavits or declarations of incontestability under section 15 of the Act;

(xiv) Requests for amendment of registrations under section 7(e) of the Act;

(xv) Requests for correction of applicants' mistakes under section 7(h) of the Act;

(xvi) Madrid-related correspondence filed under § 7.11, § 7.14 § 7.21, § 7.28 or § 7.31;

(xvii) Appointments or revocations of attorney or domestic representative;

(xviii) Notices of withdrawal of attorney; and

(xix) Requests to change or correct addresses.

* * * * *

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

4. The authority citation for 37 CFR Part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

5. Amend § 7.4 by revising paragraphs (b)(1) and (2) to read as follows:

§ 7.4 Receipt of correspondence.

* * * * *

(b) * * *

(1) Requests to record changes in the International Register under § 7.23 and § 7.24, and petitions to the Director to review an action of the Office's Madrid Processing Unit, when filed by mail, will be accorded the date of receipt in the Office, unless they are sent by Express Mail pursuant to § 2.198 of this chapter, in which case they will be accorded the date of deposit with the United States Postal Service.

(2) International applications under § 7.11, responses to notices of irregularity under § 7.14, subsequent designations under § 7.21, requests to note replacement under § 7.28, and requests for transformation under § 7.31, when filed by mail, will be accorded the date of receipt in the Office.

* * * * *

Dated: February 22, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E8–3929 Filed 2–28–08; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF THE INTERIOR

43 CFR Part 11

RIN 1090–AA97

Natural Resource Damages for Hazardous Substances

AGENCY: Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: We are proposing to revise certain parts of the natural resource damage assessment regulations for

hazardous substances. The regulations provide procedures that natural resource trustees may use to evaluate the need for, and means of restoring, replacing, or acquiring the equivalent of public natural resources that are injured or destroyed as a result of releases of hazardous substances. This notice seeks comment on the proposed revisions to the regulations in response to the biennial statutory review requirement, two court decisions, and the recommendations of the Department of the Interior's Natural Resource Damage Assessment and Restoration Federal Advisory Committee.

DATES: We will accept comments through May 29, 2008.

ADDRESSES: You may submit comments, identified by the number [insert RIN], by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov*. Follow the instruction for submitting comments.

—Mail: Department of the Interior, Natural Resource Damage Assessment and Restoration Program, Mail Stop 3548, 1849 C Street, NW., Washington, DC 20240.

—Hand delivery: Room 3548, 1849 C Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank DeLuise at (202) 208–4143.

SUPPLEMENTARY INFORMATION: This preamble is organized as follows:

I. What the Natural Resource Damage Regulations Are About
II. Why We Are Proposing To Revise Parts of the Regulations
III. Major Issues Addressed by the Proposed Revisions
A. Further Emphasizing Restoration Over Economic Damages, as Recommended by the Natural Resource Damage Assessment and Restoration Federal Advisory Committee
B. Complying With *Ohio* v. *Interior* and Responding to *Kennecott* v. *Interior*
C. Technical Corrections To Provide Consistent Timing Guidelines for the Administrative Assessment Process Set Out in the Rule

I. What These Natural Resource Damage Regulations Are About

The regulations describe how to conduct a natural resource damage assessment for hazardous substance releases under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601, 9607) (CERCLA) and the Federal Water Pollution Control Act (33 U.S.C. 1251, 1321) (Clean Water Act). CERCLA required the President to promulgate these regulations. 42 U.S.C. 9651(c). The President delegated this rulemaking responsibility to the Department of the Interior (DOI). E.O. 12316, as amended by E.O. 12580. The regulations appear at 43 CFR part 11.

A natural resource damage assessment is an evaluation of the need for, and the means of securing, restoration of public natural resources following the release of hazardous substances or oil into the environment. The regulations we are proposing to revise only cover natural resource damage assessments for releases of hazardous substances under CERCLA and the Clean Water Act. There are also natural resource damage assessment regulations at 15 CFR part 990 that cover oil spills under the Oil Pollution Act, 33 U.S.C. 2701 (the OPA regulations). The current hazardous substance natural resource damage assessment and restoration regulations, this preamble, and the proposed revisions to the regulations use ''restoration'' as an umbrella term for all types of actions that the natural resource damage provisions of CERCLA and the Clean Water Act authorize to address injured natural resources, including restoration, rehabilitation, replacement, or acquisition of equivalent resources.

Natural resource damage assessments are conducted by government officials designated to act as ''trustees'' to bring claims on behalf of the public for the restoration of injured natural resources. Trustees are designated by the President, state governors, or tribes. If trustees determine, through an assessment, that hazardous substance releases have injured natural resources, they may pursue claims for damages against potentially responsible parties. ''Damages'' include funds needed to plan and implement restoration, compensation for public losses pending restoration, reasonable assessment costs, and any interest accruing after funds are due. See 43 CFR 11.15.

The regulations establish an administrative process for conducting assessments that includes technical criteria for determining whether releases have caused injury, and if so, what actions and funds are needed to implement restoration. The regulations are for the optional use of trustees. Trustees can use the regulations to structure damage assessment work, frame negotiations, and inform restoration planning. If litigation is necessary to resolve the claim, courts will give additional deference—referred to as a ''rebuttable presumption'' in CERCLA—to assessments performed by federal and state trustees in accord with the regulations.

The regulations provide guidance on two different types of assessment procedures identified in CERCLA: ''Type A'' and ''type B'' procedures. Type A procedures are simplified procedures for small cases. The current type A procedures are computer programs, available in a limited range of cases, that model the fate of a released substance in order to project the injuries caused by the release and calculate damages. Type B procedures outline an assessment process and assessment methods that trustees utilize on a case by case basis. We are proposing to revise certain parts of the type B procedures (case by case assessment provisions) in the regulations.

II. Why We Are Proposing To Revise the Regulations

CERCLA provides that we review and revise the regulations as appropriate every two years. 42 U.S.C. 9651(c)(3). The regulations are due for such a review. To assist in this review, in May 2005, DOI convened a Natural Resource Damage Assessment and Restoration (NRDAR) Federal Advisory Committee (advisory committee) to provide recommendations regarding DOI's NRDAR activities, authorities and responsibilities. The advisory committee comprised 30 members, representing a diverse group of interested stakeholders—including state, tribal, and federal trustee agencies, industry groups and potentially responsible party representatives, scientists, economists, and national and local environmental and public interest organizations.

A key recommendation of the advisory committee was that DOI should undertake, without delay, a targeted revision of the regulations to emphasize restoration over economic damages. This proposed revision implements that recommendation, and responds to two court decisions addressing the regulations: State of *Ohio* v. *U.S. Department of the Interior*, 880 F.2d 432 (D.C. Cir. 1989) (*Ohio* v. *Interior*); and *Kennecott Utah Copper Corp.* v. *U.S. Department of the Interior*, 88 F.3d 1191 (D.C. Cir. 1996) (*Kennecott* v. *Interior*). Finally, we are proposing a technical revision to resolve an inconsistency on the appropriate timing for the administrative process set out in the rule.

We have considered:

(a) The NRDAR advisory committee report, which was released in May of 2007;

(b) Comments (provided during prior rulemakings, and more informally during public meetings, symposiums, and discussion on natural resource damage assessment and restoration) from members of the private sector, representatives of federal, state, and tribal trustees, public interest groups,

and others who have experience with the existing regulations;

(c) The *Ohio* v. *Interior* opinion;

(d) The *Kennecott* v. *Interior* opinion; and

(e) The OPA regulations.

III. Major Issues Addressed by the Proposed Revisions

Our proposed revisions would largely leave the framework of the existing rule intact. We are not proposing substantive changes to legal standards for reliability of assessment data and methodologies. The NRDAR advisory committee made a number of recommendations to encourage faster, more efficient and more cost-effective resolution of claims. The committee endorsed a tiered approach to implementing its recommendations that would immediately address the option of emphasizing restoration over economic damages in the regulations, while leaving the implementation of a broader range of recommendations—including providing technical guidance documents and streamlining of the restoration planning process—to the future. The rest of this section discusses the major issues addressed by the proposed revisions. The following section references the OPA regulations. These references are solely for the purpose of providing context and background. We are soliciting comments only on the proposed revisions to the CERCLA regulations. For guidance on conducting natural resource damage assessments under OPA, see 15 CFR Part 990.

A. Further Emphasizing Restoration Over Economic Damages

Under the current regulations, trustees utilizing the Type B procedures must base their claim on the cost of implementing a publicly reviewed restoration plan designed to return injured resources to their baseline condition, which is defined as the condition that would have existed had the release not occurred (see 43 CFR 11.80–82). CERCLA and the Clean Water Act authorize trustees to recover damages not only for the cost of restoring injured or destroyed resources to their baseline condition, but also for public losses pending restoration to baseline. The regulations call these interim losses ''compensable values'' (see 43 CFR 11.83(c)). The regulations define compensable value as the amount of money required to compensate the public for the loss in ''services'' provided by the injured resources pending restoration (see 43 CFR 11.83(c)(1)). Services are defined in the current regulations as the physical and biological functions performed by the resources, including the human use of those functions. The current regulations provide that compensable value should be measured by the economic value of public losses arising from the resource injury until restoration can be achieved, which arguably could be read as excluding restoration-based approaches to determining compensable value.

To comply with CERCLA and the Clean Water Act, trustees must spend any compensable value recoveries on restoration actions. Under the current regulations, however, trustees do not need to consider restoration actions to address interim losses until they have already determined and recovered damages. This can be inefficient and confusing. The NRDAR advisory committee recommended that DOI should amend its current regulation to explicitly authorize trustees to use the cost of restoration actions that address service losses to calculate all damages, including interim losses. Providing the option for a ''restoration-based'' approach to all damages better comports with CERCLA's overall restoration objectives. It also promotes an earlier focus on feasible restoration options, which can encourage settlements by providing opportunities for designing creative and cost-effective actions to address losses. We are proposing to revise 43 CFR 11.83(c) to provide trustees with the option of estimating compensable values for losses pending restoration utilizing the cost of implementing projects that restore those lost natural resource services.

Methodologies that compare losses arising from resource injury to gains expected from restoration actions are frequently simpler and more transparent than methodologies used to measure the economic value of losses. Our proposed revisions include four examples of project-based assessment methodologies—conjoint analysis, habitat equivalency analysis, resource equivalency analysis, and random utility models—which have been used successfully to resolve claims under both the CERCLA and the OPA regulations. We are proposing to add a brief description of these restoration-based methodologies to the non-exclusive list of economic valuation methodologies in the current regulation. Our proposed revisions do not sanction or bar the use of any particular methodology, so long as it complies with the ''acceptance criteria'' for relevance that appear in the rule.

The list of proposed methodologies for assessing compensable values remains non-exclusive, allowing for the introduction of new and innovative techniques that may arise. In 43 CFR 11.83(a), the current regulations provide that when choosing among any cost estimation or valuation methodology, trustees should seek to ensure that the methodologies selected are feasible and reliable for a particular incident or type of damage to be measured. To assist trustees in evaluating such feasibility and reliability, we are proposing to provide a list of factors that set out general principles of feasibility and reliability for all methodologies. This includes the cost reasonableness, cost effectiveness, and avoidance of double counting criteria in the current regulations, along with other factors—such as the ability to provide useful restoration information, peer review, and methodological standards—for trustees to consider when evaluating the reliability of all damage assessment methodologies. Each of the listed factors we are proposing may not be applicable in every case, but trustees continue to be required to document their consideration of relevant factors in the Report of Assessment. We solicit comment on providing the option for the use of restoration-based approaches and methodologies to resolve NRDAR claims.

B. Complying With Ohio v. Interior and Responding to Kennecott v. Interior

Several provisions of the current regulations were invalidated by the D.C. Circuit Court of Appeals in *Ohio* v. *Interior* and *Kennecott* v. *Interior*. Some invalidated provisions from the 1986 rule were carried over in the 1994 revisions responding to the *Ohio* v. *Interior* decision. Additionally, the *Kennecott* v. *Interior* decision in 1996 invalidated certain provisions from the 1994 revisions which have not yet been corrected to comply with the decision. We are proposing technical corrections to the CFR in accord with these decisions.

The *Ohio* v. *Interior* decision invalidated the limitation on estimating option and existence value in 43 CFR 11.83(c)(1)(iii). Our revisions will therefore delete this provision from the CFR. The restatement of this limitation in 43 CFR 11.83(c)(2)(vii)(B) will also be deleted from the CFR.

Estimating option and existence value through the use of contingent valuation methodologies remains controversial. We note, however, that our proposed revision's focus on compensating for public losses pending restoration with restoration actions rather than monetary damages for the economic value of the losses would provide options for comparing functional losses from resource injuries to functional gains

expected from restoration actions, which would reduce the need for trustees to seek to recover the monetary value of passive economic losses such as option and existence value.

The *Kennecott* v. *Interior* decision invalidated DOI's attempt to define the date of promulgation of the 1994 revisions to the rule. This was relevant because it affected the three-year statutory limitations for filing a claim at some CERCLA sites. In 43 CFR 11.91(e), DOI defined the date of promulgation as the later of the date when either the Type A or Type B rule was finalized, pursuant to the *Ohio* v. *Interior* decision. The Court of Appeals found this interpretation unreasonable and invalidated the provision, which we will delete from the CFR. Since both the Type A and Type B revisions finalized pursuant to the *Ohio* v. *Interior* decision were finalized more than three years ago, this deletion is merely a technical correction which has no material effect.

The 1994 revisions to the NRDAR rule stated that the measure of natural resource damages under CERCLA was the cost of restoration of ''the injured natural resources and the services those resources provide'' (see 43 CFR 11.80(b)). In the *Kennecott* decision, the Court of Appeals invalidated this language because it was inconsistent with DOI's preamble explanation of the measure of damages, which endorsed the concept of quantifying resource injury and resulting public losses by utilizing a services metric. The court reasoned that creating an apparent dichotomy between restoration of resources and restoration of services implied an abandonment of the services approach that was unexplained. The court therefore invalidated the ''resources and services'' language and ''reinstated'' the services approach, pending further clarification.

Under the current rule, natural resource damages include both the cost of restoring injured resources to their baseline level of services and, when appropriate, compensation for interim service losses pending restoration. Under the current rule, restoration to baseline focuses on the resource condition, while compensable value focuses on compensation for lost services pending the restoration of resources. ''Resources and services'' reflects the distinct emphases for different damage components, but it was not intended as a rejection of a services-based approach. As the proposed revisions make clear, the metric for evaluating natural resource conditions for baseline restoration is the baseline level of services, while the compensable value for losses pending restoration is either the value of the services lost pending restoration or the cost of projects that compensate for services lost pending restoration.

The proposed revision to 43 CFR 11.80(b) clarifies that the measure of damages is the cost of restoring injured natural resources to their baseline level of services, and, at the discretion of the trustees, the compensable value of services lost pending restoration. This clear construct is carried over for conforming changes to 43 CFR 11.81(a)(1) and (2), 43 CFR 11.82(a), (b)(iii), and (c), and 43 CFR 11.83(a).

C. Technical Correction To Provide Consistent Timing Guidelines

The current regulations provide that a Restoration and Compensation Determination Plan (RCDP) which evaluates and selects restoration alternatives may be developed after completion of the injury determination and quantification phases of the assessment (see 43 CFR 11.81(d)(1)). However, an earlier provision of the current regulations provides that the RCDP can be developed ''at any time before'' completion of the injury determination or quantification phases. (See 43 CFR 11.31(c)(4)). Since the evaluation and selection of restoration alternatives can benefit from more definitive injury determination and quantification data, we propose to resolve this inconsistency by correlating 43 CFR 11.31(c)(4) with 43 CFR 11.81(d)(1) to provide that the RCDP may be completed after the injury determination and quantification phases of the assessment.

IV. How We Have Complied With Rulemaking Requirements

Regulatory Planning and Review under E.O. 12866—The Office of Management and Budget has reviewed the proposed revisions. The revisions are a significant regulatory action under E.O. 12866 because the rule will raise novel legal or policy issues. The revisions clarify that trustees have the option of calculating total damages using the cost of restoration actions that compensate for losses, rather than requiring a two-part process where natural resource damages are calculated using the cost of restoration actions, and public losses pending restoration are calculated using the economic value of the loss.

These revisions do not fall under other criteria in E.O. 12866:

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The regulations we are revising apply only to natural resource trustees by providing technical and procedural guidance for the assessment of natural resource damages under CERCLA and the Clean Water Act. The revisions are not intended to change the balance of legal benefits and responsibilities among any parties or groups, large or small. It does not directly impose any additional cost.

In fact, the proposed revisions should assist in reducing natural resource damage assessment transaction costs by allowing trustees to utilize simpler and more transparent methodologies to assess damages when appropriate. The proposed revisions do not sanction or bar the use of any particular methodology, so long as it meets the acceptance criteria for relevance and cost effectiveness that are set out in the rule.

We also believe that in many cases an early focus on feasible restoration and appropriate restoration actions, rather than on the economic value of public losses, can result in less contention and litigation, and faster, more cost-effective restoration. Meanwhile, existing criteria in the rule for evaluating restoration alternatives—including cost effectiveness—remain intact (see 43 CFR 11.82(d)). The likely result will be the encouragement of settlements, less costly and more timely restoration, and reduced transaction costs. To the extent any are affected by the proposed revisions, it is anticipated that all parties will benefit by the increased focus on restoration in lieu of economic damages.

b. The proposed revisions will not create inconsistencies with other agencies' action. The general approach to losses pending restoration set forth in this rule is consistent with the OPA regulations. Both allow for basing damages on the cost of restoration actions to address public losses associated with natural resource injuries.

Regulatory Flexibility Act—We certify that this rule revision will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601) (see section on E.O. 12866 above for discussion of potential economic effects.)

Small Business Regulatory Enforcement Fairness Act—This rule revision is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule revision:

(a) Does not have an annual effect on the economy of $100 million or more (see section on E.O. 12866 above for

discussion of potential economic effects.)

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions (see section on E.O. 12866 above for discussion of potential economic effects.)

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (see section on E.O. 12866 above for discussion of potential economic effects.)

Unfunded Mandates Reform Act—This rule revision does not mandate any actions. The existing regulations do not require trustees to conduct assessment or pursue damage claims, and trustees who choose to conduct assessments and pursue damage claims are not required to do so in a manner described in the regulations. The proposed revisions do not change the optional nature of the existing regulations. The revisions themselves do not replace existing procedures; they merely clarify that trustees have the option of employing other procedures. Therefore, this rule revision will not produce a Federal mandate of $100 million or greater in any year.

Takings Analysis under E.O. 12630—A takings implication assessment is not required by E.O. 12630 because no party can be compelled to pay damages for injury to natural resources until they have received ''due process'' through a legal action in federal court. This rule and the proposed revisions merely provide a framework for assessing injury and developing the claim.

Federalism Analysis under E.O. 12612—E.O. 12612 requires federal agencies to consult with elected state officials before issuing proposed rules that have ''federalism implications'' and either impose unfunded mandates or preempt state law. A rule has federalism implications if it has ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' This rule and the proposed revisions do not require state trustees to take any action; therefore it does not impose any unfunded mandates. The rule and the proposed revisions do not preempt state law. The rule and the proposed revisions have no significant effect on intergovernmental relations because they do not alter the rights and responsibilities of government entities. Therefore, a federalism summary impact statement is not required under section 6 of the Order.

Civil Justice Reform under E.O. 12988—Our Office of the Solicitor has determined that the proposed revisions do not unduly burden the judicial system and meet the requirements of section 3(a) and 3(b)(2) of the Order. The proposed revisions are intended to provide the option for an early focus on restoration, utilization of simpler and more cost-effective assessment methodologies, and increased opportunities for cooperation among trustees and potentially responsible parties. This should minimize litigation.

Paperwork Reduction Act—The proposed revisions do not pose ''identical questions'' to, or impose ''identical reporting, record keeping, or disclosure requirements,'' on trustees. Therefore, the proposed revisions do not include an ''information collection'' governed by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act—We have analyzed the proposed revisions in accordance with the criteria of the National Environmental Policy Act, 43 U.S.C. 433 *et seq.* (NEPA). Restoration actions identified through the proposed revisions may sometimes involve major federal actions significantly affecting the quality of the human environment. In those cases, federal trustees will need to comply with NEPA. However, the proposed revisions do not require trustees to take restoration action. Further, if the trustees decide to pursue restoration, they are not required to follow the rule when selecting restoration actions. Finally, the rule and the proposed revisions do not determine the specific restoration actions that trustees can seek. Therefore, the rule and the proposed revisions do not significantly affect the quality of the human environment. Even if the rule revisions were considered to significantly affect the quality of the human environment, they would fall under DOI's categorical exclusion for regulations that are of a procedural nature or have environmental effects too broad or speculative for meaningful analysis and will be subject later to the NEPA process.

Public Availability of Comments

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

List of Subjects in 34 CFR Part 11

Natural resources, Environmental protection.

Dated: January 10, 2008.

James E. Cason,

Associate Deputy Secretary.

For the reasons given in the preamble, we propose to amend part 11 of title 43 of the Code of Federal Regulations as follows:

PART 11—NATURAL RESOURCE DAMAGES FOR HAZARDOUS SUBSTANCES

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

Authority: 42 U.S.C. 9651(c), as amended.

2. In § 11.31, revise paragraph (c)(4) to read as follows:

§ 11.31 What does the Assessment Plan include?

(c) * * *

(4) The Restoration and Compensation Determination Plan developed in accordance with the guidance in § 11.81 of this part. If existing data are not sufficient to develop the Restoration and Compensation Determination Plan as part of the Assessment Plan, the Restoration and Compensation Determination Plan may be developed later, after the completion of the Injury Determination or Quantification phases. If the Restoration and Compensation Determination Plan is published separately, the public review and comment will be conducted pursuant to § 11.81(d) of this part.

* * * * *

3. In § 11.38, revise paragraph (c)(2)(i) to read as follows:

§ 11.38 Assessment Plan—preliminary estimate of damages.

(c) * * *

(2) * * *

(i) The preliminary estimate of compensable value should represent the expected present value of the anticipated compensable value, expressed in constant dollars, accrued through the period for the restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to baseline conditions, i.e., between the occurrence of the discharge or release and the completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources to their baseline level of services. The estimate should use the same base year as the preliminary

estimate of costs of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources. The provisions detailed in §§ 11.80 through 11.84 of this part are the basis for the development of this estimate.

* * * * *

4. In § 11.80, revise paragraph (b) to read as follows:

§ 11.80 Damage determination phase—general.

* * * * *

(b) *Purpose.* The purpose of the Damage Determination phase is to establish the amount of money to be sought in compensation for injuries to natural resources resulting from a discharge of oil or release of a hazardous substance. The measure of damages is the cost of restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources to their baseline level of services. Damages may also include, at the discretion of the authorized official, the compensable value of all or a portion of the services lost to the public for the time period from the discharge or release until the attainment of the restoration, rehabilitation, replacement, and/or acquisition of equivalent of baseline.

* * * * *

5. In § 11.81, revise paragraph (a) to read as follows:

§ 11.81 Damage determination phase—restoration and compensation determination plan.

(a) *Requirement.* (1) The authorized official shall develop a Restoration and Compensation Determination Plan that will list a reasonable number of possible alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to their baseline level of services, and, where relevant, the compensable value; select one of the alternatives and the actions required to implement that alternative; give the rationale for selecting that alternative; and identify the methodologies that will be used to determine the costs of the selected alternative and, at the discretion of the authorized official, the compensable value of the services lost to the public associated with the selected alternative.

(2) The Restoration and Compensation Determination Plan shall be of sufficient detail to evaluate the possible alternatives for the purpose of selecting the appropriate alternative to use in determining the cost of restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to their baseline level of services, and, where relevant, the compensable value.

* * * * *

6. In § 11.82, revise paragraphs (a), (b)(1)(iii), and (c)(1) to read as follows:

§ 11.82 Damage determination phase—alternatives for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources.

(a) *Requirement.* The authorized official shall develop a reasonable number of possible alternatives for the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured natural resources to their baseline level of services. For each possible alternative developed, the authorized official will identify an action, or set of actions, to be taken singly or in combination by the trustee agency to achieve the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources to their baseline level of services. The authorized official shall then select from among the possible alternatives the alternative that he determines to be the most appropriate based on the guidance provided in this section.

(b) * * *

(1) * * *

(iii) Possible alternatives are limited to those actions that restore, rehabilitate, replace, and/or acquire the equivalent of the injured resources to their baseline, that is, the condition without a discharge or release as determined in § 11.72 of this part.

* * * * *

(c)(1) The possible alternatives considered by the authorized official that return the injured resources to their baseline level of services could range from: intensive action on the part of the authorized official to return the various resources and services provided by those resources to baseline conditions as quickly as possible; to natural recovery with minimal management actions. Possible alternatives within this range could reflect varying rates of recovery, combination of management actions, and needs for resource replacements or acquisitions.

* * * * *

7. In § 11.83, revise paragraphs (a)(1), (a)(3), and (c) to read as follows:

§ 11.83 Damage determination phase—cost estimating and valuation methodologies.

(a) *General.* (1) This section contains guidance and methodologies for determining: the costs of the selected alternative for restoration, rehabilitation, replacement, and/or acquisition of equivalent resources to their baseline level of services; and the compensable value of the services lost to the public through the completion of the restoration, rehabilitation, replacement, and/or acquisition of the equivalent of the injured resources to baseline.

* * * * *

(3) Only those methodologies that are feasible and reliable for a particular incident and type of damage to be measured shall be utilized. The authorized official should consider the following factors to evaluate feasibility and reliability of methodologies. Each factor, however, may not be applicable to every case. The authorized official shall document the consideration of relevant factors in the Report of Assessment:

(i) Is the methodology capable of providing information of use in determining the restoration cost or compensable value appropriate for a particular natural resource injury?;

(ii) Can the methodology be implemented at a reasonable cost, as that term is used in this part?;

(iii) Does the methodology avoid double counting or allow any double counting to be estimated and eliminated in the final damage calculation?;

(iv) Is the methodology cost-effective, as that term is used in this part?;

(v) Does the methodology address the particular natural resource injury and associated service loss in light of the nature, degree, and spatial and temporal extent of the injury?;

(vi) Has the methodology been subject to peer review, either through publication or otherwise?;

(vii) Does the methodology enjoy general or widespread acceptance by experts in the field?;

(viii) Is the methodology subject to standards governing its application?;

(ix) Are methodological inputs and assumptions supported by a clearly articulated rationale?;

(x) Are cutting edge methodologies tested or analyzed sufficiently so as to be reasonably reliable under the circumstances?

* * * * *

(c) *Compensable value.* (1) Compensable value is the amount of money required to compensate the public for the loss in services provided by the injured resources between the time of the discharge or release and the time the resources are fully returned to their baseline conditions. The compensable value can include the economic value of lost services provided by the injured resources, including both public use and nonuse values such as existence and bequest

values. Economic value can be measured by changes in consumer surplus, economic rent, and any fees or other payments collectable by a Federal or State agency or an Indian tribe for a private party's use of the natural resources; and any economic rent accruing to a private party because the Federal or State agency or Indian tribe does not charge a fee or price for the use of the resources. Alternatively, compensable value can be determined utilizing a restoration cost approach, which measures the cost of implementing a project or projects that restore, replace, or acquire the equivalent of natural resource services lost pending restoration to baseline.

(i) Use value is the economic value of the resources to the public attributable to the direct use of the services provided by the natural resources.

(ii) Nonuse value is the economic value the public derives from natural resources that is independent of any direct use of the services provided.

(iii) Restoration cost is the cost of a project or projects that restore, replace, or acquire the equivalent of natural resource services lost pending restoration to baseline.

(2) *Valuation methodologies.* The authorized official may choose among the valuation methodologies listed in this section to estimate appropriate compensation for lost services or may choose other methodologies provided that the methodology can satisfy the acceptance criterion in paragraph (c)(3) of this section. Nothing in this section precludes the use of a combination of valuation methodologies so long as the authorized official does not double count or uses techniques that allow any double counting to be estimated and eliminated in the final damage calculation.

Type of methodology	Description
(i) Market price	The authorized official may determine the compensable value of the injured resources using the diminution in the market price of the injured resources or the lost services. May be used only if: (A) The natural resources are traded in the market; and (B) The authorized official determines that the market for the resources, or the services provided by the resources, is reasonably competitive.
(ii) Appraisal	The measure of compensable value is the difference between the with- and without-injury appraisal value determined by the comparable sales approach as described in the Uniform Appraisal Standards. Must measure compensable value, to the extent possible, in accordance with the ''Uniform Appraisal Standards for Federal Land Acquisition,'' Interagency Land Acquisition Conference, Washington, DC, 1973 (incorporated by reference, see § 11.18).
(iii) Factor income (sometimes referred to as the ''reverse value added'' methodology).	May be used only if the injured resources are inputs to a production process, which has as an output a product with a well-defined market price. May be used to determine: (A) The economic rent associated with the use of resources in the production process; and (B) The in-place value of the resources.
(iv) Travel cost	May be used to determine a value for the use of a specific area. Uses an individual's incremental travel costs to an area to model the economic value of the services of that area. Compensable value of the area to the traveler is the difference between the value of the area with and without a discharge or release. Regional travel cost models may be used, if appropriate.
(v) Hedonic pricing	May be used to determine the value of nonmarketed resources by an analysis of private market choices. The demand for nonmarketed natural resources is thereby estimated indirectly by an analysis of commodities that are traded in a market.
(vi) Unit value/benefits transfer.	Unit values are preassigned dollar values for various types of nonmarketed recreational or other experiences by the public. Where feasible, unit values in the region of the affected resources and unit values that closely resemble the recreational or other experience lost with the affected resources may be used.
(vii) Contingent valuation	Includes all techniques that set up hypothetical markets to directly elicit an individual's economic valuation of a natural resource. Can determine: (A) Use values and explicitly determine option and existence values; and (B) Lost use values of injured natural resources.
(viii) Conjoint Analysis	Like contingent valuation, conjoint analysis is a stated preference method. However, instead of seeking to value natural resource service losses in strictly economic terms, conjoint analysis compares natural resource service losses that arise from injury to natural resource service gains produced by restoration projects.
(ix) Habitat Equivalency Analysis.	May be used to compare the natural resource services produced by habitat or resource-based restoration actions to natural resource service losses.
(x) Resource Equivalency Analysis.	Similar to habitat equivalency analysis. This methodology may be used to compare the effects of restoration actions on specifically identified resources that are injured or destroyed.
(xi) Random Utility Model	Can be used to: (A) Compare restoration actions on the basis of equivalent resource services provided; and (B) Calculate the monetary value of lost recreational services to the public.

(3) *Other valuation methodologies.* Other methodologies that measure compensable value in accordance with the public's willingness to pay for the lost service, or with the cost of a project that restores, replaces, or acquires services equivalent to natural resource services lost pending restoration to baseline in a cost-effective manner, are acceptable methodologies to determine compensable value under this part.

* * * * *

§ 11.91 [Amended]

8. In § 11.91, remove paragraph (e).

[FR Doc. E8–3683 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–RG–P

Notices

Federal Register
Vol. 73, No. 41
Friday, February 29, 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

Forest Service

Apache-Sitgreaves National Forests, Apache, Greenlee and Navajo Counties, AZ; Apache-Sitgreaves National Forests Public Motorized Travel Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement; Correction.

SUMMARY: On October 10, 2007, the **Federal Register** published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Motorized Travel Management Plan on the Apache-Sitgreaves National Forests (72 FR 57514–57517). On October 31, 2007, the **Federal Register** published a corrected NOI for that document (72 FR 61607). The Apache-Sitgreaves National Forests then conducted five public meetings in November 2007, to present the proposed action. After careful and deliberate consideration of public input received during those meetings, the Forests Supervisor decided to modify the proposed action. As a result, the Forest Service is hereby entirely revising both NOI documents, **Federal Register** of October 10, 2007 (72 FR 57514–57517) and **Federal Register** of October 31, 2007 (72 FR 61607), to read as follows.

Revision: The Forest Service proposes to designate which routes (roads and trails) and areas on federal lands administered by the Forest Service within the Apache-Sitgreaves National Forests (Forests) are open to motorized travel. In doing so, the agency will comply with the requirements of the Forest Service 2005 Travel Management Rule. The Forest Service will produce a Motorized Vehicle Use Map (MVUM) that reveals those routes and areas on the Forests that are open to motorized travel. The MVUM will be the primary tool used to determine compliance and enforcement with motor vehicle use designations on the ground. Existing routes, user-created routes and areas not designated as open on the MVUM will be legally closed to motorized travel except as allowed by permit or other authorization. Cross-country motorized travel will be prohibited except by special permit. The decisions on motorized travel do not include over-snow travel or existing winter-use recreation and will not change the management of or restrict non-motorized methods of travel on the Forests.

DATES: Submit written or electronic issues and concerns related to the proposed action by March 14, 2008. The draft environmental impact statement is expected to be released in January 2009 and the final environmental impact statement is expected in April 2009.

ADDRESSES: Send written issues and concerns to Travel Management, Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, AZ 85938. Electronic comments may be sent to *asnf_travel_management@fs.fed.us* with ''Travel Management'' in the subject line. Electronic comments must be readable in Microsoft Word (.doc), rich text (.rtf), Portable Document Format (pdf), text (.txt) or hypertext markup language (.html).

FOR FURTHER INFORMATION CONTACT: Jim Copeland, Team Leader at (928) 333–4301/(923) 339–4384.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this action is to improve management of motorized (36 CFR 212.1, *Motor Vehicle*) vehicle travel on National Forest System (NFS) lands within the Apache-Sitgreaves National Forests (Forests) in accordance with provisions identified in 36 CFR parts 212, 251, 261, and 295 *Travel Management; Designated Routes and Areas for Motor Vehicle Use; Final Rule*. Currently, wheeled motorized vehicle travel by the public is not prohibited off designated routes except by signed Forests Orders. The number of user created routes continues to grow each year, with many routes having environmental impacts and safety concerns that have not been addressed. Therefore, there is a need to manage the Forests' transportation system in a sustainable manner through designation of NFS roads, motorized NFS trails, and areas for motor vehicle use, and the prohibition of motorized cross-country travel (except by permit or special order).

Proposed Action

The proposed action is to designate roads, trails, and areas open to motorized travel on lands administered by the Apache-Sitgreaves National Forests (Forests). Where it is appropriate and necessary, the designations will also specify seasons of use, type of vehicle(s) permitted, and types of use for those roads, trails, and areas. In doing so, the Forests will comply with requirements of the Forest Service 2005 Travel Management Rule (36 CFR part 212). As a result of these travel management decisions, the Forests will produce a Motorized Vehicle Use Map (MVUM) depicting those routes and areas on the Apache-Sitgreaves National Forests that are open to motorized travel.

In order to implement the proposed action, it will be necessary to amend some existing direction and terminology in the 1987 *Apache-Sitgreaves National Forests Land and Resource Management Plan*, as amended. These changes to the Forests Plan direction would be enduring changes and would apply to this decision and all subsequent project decisions unless and until further modified.

The Forests' public transportation system open to motorized travel under this proposal would be approximately 2,961 miles. Currently used closed roads (roads identified as closed in the Forests' database) and user created roads not identified as open under this proposal would no longer be open to public motorized use. Specifically, this proposed public motorized transportation system would allow for a balance between various recreational and commercial uses of the Forests. It would provide for various forms of reasonable motorized use on a designated system of routes in a responsible manner that addresses multiple resource concerns.

The proposed public motorized transportation system is depicted in detail on five maps, one for each Ranger District, collectively referred to as the *Apache-Sitgreaves National Forests Public Motorized Travel Management Plan Modified Proposed Action Map*, is located on the Forests' Web Site: *http://*

www.fs.fed.us/r3/asnf/projects/travel-management.shtml. In addition, maps will be available for viewing at:

Supervisor's Office, 30 South Chiricahua St., Springerville, AZ.
Alpine Ranger District, Junction Hwy 180 & 191, Alpine, AZ.
Black Mesa Ranger District, 2748 E. Hwy 260, Overgaard, AZ.
Clifton Ranger District, 397240 AZ 75, Duncan, AZ.
Springerville Ranger District, 165 S. Mountain Ave., Springerville, AZ.
Lakeside Ranger District, 2022 W. White Mountain Blvd., Lakeside, AZ.

Other existing routes not shown on this map would not be open to public motorized travel. New routes would not be created except by written decision of an authorized Forest Service official. Unauthorized new routes would not be approved for public travel. If this proposal is selected for implementation, the information on this map would become the Motor Vehicle Use Map (MVUM) required by regulation and agency policy.

Under this proposal most of the proposed public motorized transportation system routes would occur on existing National Forest System (NFS) routes currently open to the public for motorized travel. This proposal also includes designation of some currently unauthorized user-created routes to connect existing NFS routes.

Approximately 1,956 miles of NFS roads would be designated for mixed-use as ''roads open to all vehicles.'' NFS roads not considered for mixed-use would be designated as ''roads open to highway legal vehicles only'' (695 miles), or ''routes open only to vehicles 50″ or less in width'' (310 miles).

This proposal would allow cross-country motorized big game retrieval (MBGR), up to 1 mile from a designated route, of legally harvested and properly tagged elk and mule deer during certain seasons, in certain Game Management Units, during certain times of the day. The intent of this segment of the proposal is to reduce spoilage and waste by providing reasonable access to downed animals that are difficult to move long distances without motorized assistance. This proposal would also allow Arizona Challenged Hunter Access/Mobility Permit (CHAMP) holders the ability for cross-country motorized game retrieval, up to 1 mile from a designated route, of legally harvested and properly tagged elk, mule deer, and black bear. Cross-country MBGR will be subject to other existing regulations intended to protect natural and/or heritage resources. This includes compliance with regulations addressing use of vehicles off roads (36 CFR 261.15), National Forest Wilderness (36 CFR 261.18), and National Forest Primitive Areas (36 CFR 261.21), as well as other applicable laws and regulations. No MBGR will be allowed in Wilderness or Primitive areas. Motorized cross-country retrieval of other game animals would not be allowed under this proposal because these animals are small enough to retrieve without motorized assistance. This proposal is consistent with 36 CFR 212.51(8)(b) and the recommendation from Arizona Game and Fish Department.

Roadside parking within vehicle length from the shoulder of designated routes is proposed, unless otherwise posted on-the-ground and provided it is safe to do so and without causing damage to NFS resources or facilities. this would allow the public to access many traditionally used dispersed campsites adjacent to NFS roads or within a short walking distance of those roads.

This proposal would allow dispersed motorized camping in designated dispersed campsites. Currently, the Forests have identified approximately 1,612 historically used dispersed camp sites. The Forests recognize that not all historically used day-use or dispersed camp sites have been identified and will continue to collaborate with the public to identify more sites. Motor vehicles would be allowed to travel the currently established route to designated areas for day-use parking or dispersed camping. This would allow for reasonable recreational use of NFS lands while reducing the potential for resource damage. Designated dispersed campsites would not be displayed on the MVUM.

This proposal would allow dispersed motorized camping off designated routes, in certain areas, under certain conditions. Motorized dispersed camping would be allowed along designated corridor routes. Designated routes with designated corridor camping would be displayed on the proposed action maps and would be displayed on the MVUM. Motorized vehicles would be permitted to travel 300 feet or less from either side of the centerline of designated corridor routes, using the most direct route to and from the campsite and the adjacent designated route. Cross-country motorized travel within the designated corridors would not be allowed for purposes of searching for or locating a campsite or other general travel. Currently, the Forests have identified approximately 938 miles of designated corridors on the Black Mesa (702 miles), Lakeside (1 mile), Springerville (78 miles), and Clifton (157 miles) Ranger Districts. The Alpine Ranger District proposes to meet the intent of the TMR and the needs of the recreating public by utilizing other strategies such as roadside parking and designated dispersed day-use and camp sites.

This proposal would allow cross-country motorized travel in eight designated Areas on the Black Mesa (6 areas) and Lakeside (2 areas) Ranger Districts that total approximately 5,989 acres. The intent is to provide expanded motorized travel opportunities in areas with multiple campsites, but without a defined transportation system. Designated cross-country travel Areas would be displayed on the MVUM and clearly marked on the ground.

Possible Alternatives

The initial proposed action presented to the public during November, 2007, may be included and analyzed in the EIS. In addition, the EIS will fully describe and evaluate the no action alternative and a full range of alternatives identified during scoping.

Responsible Official

The Responsible Official is the Forests Supervisor, Apache-Sitgreaves National Forests, P.O. Box 640, Springerville, AZ 85938.

Nature of Decision To Be Made

Based on the purpose and need for the proposed action, The Forests Supervisor will evaluate the proposed action and other alternatives in order to decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to make changes to the existing Apache-Sitgreaves National Forests transportation system. Once the decision is made, the Apache-Sitgreaves National Forests will publish a Motor Vehicle Use Map (MVUM) identifying the roads, trails, and areas that are designed for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated.

Federal land managers are directed (Executive Order 11644, 36 CFR 212, and 43 CFR 8342.1) to provide for public use of routes designated as open, to ensure that the use of motorized vehicles and off-road vehicles will be controlled and directed so as to protect the resources of those lands under their authority, to promote the safety of users, and to minimize conflicts among various users of federal lands.

Public Involvement

The Apache-Sitgreaves National Forests hosted and participated in approximately 26 public meetings and workshops, relating to travel management and the Travel Analysis Process (TAP), during 2005 to 2007, across the Forests and local communities. Local citizens, State, county, local, and tribal governments and other Federal Agencies were invited to collaborate with the Forests on routes they wanted to remain open and/or closed or those routes that may be in conflict with other desired conditions. This preliminary, pre-NEPA public input was invaluable in helping the Forests develop the initial proposed action.

The Forests then hosted five public meetings to present to the public the initial proposed action; which was developed considering access to private lands within NFS lands boundaries, current and predicted future funding, and access to the Forests for public motorized and non-motorized recreation. After careful and deliberate consideration of public input received during those meetings, the Forests Supervisor decided to modify the initial proposed action.

Scoping Process

Public participation will be especially important at several points during the analysis. The Forests will be seeking information, comments, and assistance from Federal, State, and other local agencies and other individuals or organizations that may be interested in or affected by the modified proposed action. The Forests will conduct open-house meetings to inform the public and interested parties on this modified proposal. Comments on this proposed action will be taken only in written format during the meetings. The meetings are scheduled at the following locations, dates and times:

Show Low, AZ—March 6, 2008 (Thursday), from 3 p.m. to 7 p.m. and March 8, 2008 (Saturday), from 9 a.m. to 1 p.m., Show Low Public Library, 180 N. 9th Street.

Springerville, AZ—March 6, 2008 (Thursday), from 4 p.m. to 7 p.m. and March 8, 2008 (Saturday), from 9 a.m. to 1 p.m., Forest Service Supervisor's Office Conference Room, 30 South Chiricahua Drive.

Clifton, AZ—March 6, 2008 (Thursday), from 3 p.m. to 7 p.m., Clifton Community Center, Clifton Train Depot, 100 North Coronado Blvd. (U.S. Highway 191).

Safford, AZ—March 8, 2008 (Saturday), from 9 a.m. to 1 p.m., Bottom Floor Assembly Room, Graham County General Services Building, 921 Thatcher Blvd.

Heber, AZ—March 6, 2008 (Thursday), from 4 p.m. to 7 p.m. and March 8, 2008 (Saturday), from 9 a.m. to 1 p.m., Mogollon High School gymnasium, 3450 Mustang Ave.

Alpine, AZ—March 6, 2008 (Thursday), from 3 p.m. to 7 p.m. and March 8, 2008 (Saturday), from 9 a.m. to 1 p.m., Alpine Community Center, 42627 U.S. Highway 180.

Based on comments received as a result of this notice and after the Forests have conducted public open-house meetings and afforded the public sufficient time to respond to the modified proposed action, the Forests will use the public scoping comments and resource related input from the interdisciplinary team and other agency resource specialists to develop a set of significant issues to carry forward into the environmental analysis process.

The draft environmental impact statement (EIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 2009. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will extend 45 days from the date the EPA notice appears in the **Federal Register**. At that time, the draft EIS will be posted on the Forests Web Site and copies will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Apache-Sitgreaves National Forests participate at that time. Those who provide comments during the official 45-day comment period are eligible to appeal the decision under 36 CFR part 215. Interest expressed or comments provided on this project prior to or after the close of the official comment period will not constitute standing for appeal purposes. Comments must meet the requirements of 36 CFR 215.6.

The final EIS is scheduled to be completed in April, 2009. In the final EIS, the Forests are required to respond to substantive comments received during the draft EIS comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision.

Preliminary Issues

The Forests have received some indications of potential issues from the initial public involvement process. Those potential issues include:

(1) Resource damage caused by inappropriate types of vehicle use, (e.g. motorized vehicles in fragile or steep terrain); proliferation of routes (e.g. parallel trails or roads, continued traffic on closed roads and travel off designated routes); and continued use during seasonal restrictions (e.g. routes closed to protect resources during wet or muddy seasons).

(2) Disturbing or harming wildlife by using routes in important or critical wildlife habitat areas, too many roads in wildlife habitat areas, and disturbances to wildlife during critical lifecycle periods.

(3) Concerns about recreational opportunities, including loss of access to NFS lands for recreational opportunities if cross-country and existing routes are closed to motorized travel; loss of primitive or semi-primitive non-motorized recreation opportunities if more routes or areas are opened to motorized travel; and how to appropriately and reasonably accommodate the rapidly growing number of motorized users desiring to use federal lands for recreational riding of OHVs.

(4) Concerns on how the system might be designed to facilitate effective enforcement.

(5) Safety concerns on routes where multiple vehicle types (e.g. full-sized trucks and cars, ATVs, motorcycles) are allowed at the same time.

(6) Impacts to multiple use management of the Forests if routes are reduced.

(7) Economic impacts to local and surrounding communities.

The Forests recognize that this list of issues is not complete and will be further defined and refined as scoping continues. The Forests intend to develop a comprehensive list of significant issues before the full range of alternatives is developed and the environmental analysis is begun.

Comment Requested

This revised notice of intent continues the scoping process which guides the development of the environmental impact statement for the Apache-Sitgreaves National Forests Public Wheeled Motorized Travel Management Plan.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the draft EIS comment period so that substantive comments and objections are made available to the Forests at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forests in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: February 20, 2008.

Deryl D. Jevons,

Acting Forests Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 08–882 Filed 2–28–08; 8:45 am]

BILLING CODE 3410–11–M

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

Request for Nominations to the Board of Trustees

AGENCY: Institute of American Indian and Alaska Native Culture and Arts Development (aka Institute of American Indian Arts).

ACTION: Notice—Request for nominations.

SUMMARY: The Board directs the Administration of the Institute of American Indian and Alaska Native Culture and Arts Development, including soliciting, accepting, and disposing of gifts, bequests, and other properties for the benefit of the Institute. The Institute, established under Public Law 99–498 (20 U.S.C. 4411 *et seq.*), provides scholarly study of and instruction in Indian art and culture, and establishes programs which culminate in the awarding of degrees in the various fields of Indian art and culture.

The Board consists of thirteen members appointed by the President of the United States, by and with the consent of the U.S. Senate, who are American Indians or persons knowledgeable in the field of Indian art and culture. This notice requests nominations to fill seven expiring terms and one vacancy on the Board of Trustees.

ADDRESSES: Institute of American Indian Arts, 83 Avan Nu Po Road, Santa Fe, New Mexico 87508.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Martin, President, 505–424–2302.

Dated: February 21, 2008.

Robert Martin,

President.

[FR Doc. E8–3897 Filed 2–28–08; 8:45 am]

BILLING CODE 4312–W4–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* March 30, 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 CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: On January 4, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 841) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

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

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

2. 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.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Document Destruction, Internal Revenue Service, 412 N. Cedar Bluff Rd, Knoxville, TN.
Service Type/Location: Document Destruction, Internal Revenue Service, 710 Locust St, Knoxville, TN.
NPA: Goodwill Industries—Knoxville, Inc., Knoxville, TN.
Contracting Activity: Department of the Treasury, Internal Revenue Service, Chamblee, GA.

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–3892 Filed 2–28–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

ACTION: Proposed Additions to and Deletion from the Procurement List.

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

Comments Must Be Received on or Before: March 30, 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.

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

Regulatory Flexibility Act Certification

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

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

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

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

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

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Fan Folded Self-Stick Note
NSN: 7530–00–NIB–0851—Value Pack with Dispenser
NPA: Association for the Blind & Visually Impaired-Goodwill Ind. of Greater Rochester, Rochester, NY
Coverage: A-List for the total Government requirement as specified by the General Services Administration.
Contracting Activity: General Services Administration, Federal Supply Services, Region 2, New York, NY

Steering Wheel
NSN: 2530–00–277–2689
NPA: Opportunities, Inc. of Jefferson County, Fort Atkinson, WI
Coverage: C-List for the requirement of the Defense Supply Center Columbus, Columbus, OH
Contracting Activity: Defense Supply Center Columbus, Columbus, OH

Pushpins, Assorted Colors
NSN: 7510–01–207–3978
NPA: Delaware County Chapter, NYSARC, Inc., Walton, NY
Coverage: A-List for the total Government requirement as specified by the General Services Administration.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY

Mop, Flat, Microfiber
NSN: 7920–00–NIB–0470—3M SKILCRAFT Easy Scrub Flat Mop Tool with 16″ pad holder
NSN: 7920–00–NIB–0471—3M SKILCRAFT Easy Scrub Flat Mop 18″ pads, White
NSN: 7920–00–NIB–0472—3M SKILCRAFT Easy Scrub Flat Mop 18″ pads, Blue
NSN: 7920–00–NIB–0473—3M SKILCRAFT Easy Scrub Flat Mop 18″ pads, Red
NSN: 7920–00–NIB–0474—3M SKILCRAFT Easy Scrub Flat Mop 18″ pads, Green
NSN: 7920–00–NIB–0475—3M SKILCRAFT East Scrub Starter Kit
NSN: 7920–00–NIB–0476—SKILCRAFT 18″ Blue Wet Mop
NSN: 7920–00–NIB–0477—SKILCRAFT 24″ Blue Wet Mop
NSN: 7920–00–NIB–0478—SKILCRAFT 18″ Yellow Dust Mop
NSN: 7920–00–NIB–0479—SKILCRAFT 24″ Yellow Dust Mop
NSN: 7920–00–NIB–0480—SKILCRAFT Flat Mop Handle with Frame 18″
NSN: 7920–00–NIB–0481—SKILCRAFT Flat Mop Handle with Frame 24″
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY
Coverage: C-List for the requirement of the Department of Veterans Affairs, Hines, IL
Contracting Activity: Department of Veterans Affairs, National Contracts Division, Hines, IL

Deletion

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 should not 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 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 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 service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, U.S. Federal Building and U.S. Post Office, 304 N. 8th, Boise, ID
NPA: Western Idaho Training Company, Inc., Caldwell, ID
Contracting Activity: General Services Administration, Public Building Services, Region 10

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–3891 Filed 2–28–08; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights

ACTION: Notice of meeting and briefing.

DATE AND TIME: Friday, March 7; 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda
II. Approval of Minutes
- December 3 Meeting
- January 11 Meeting
- February 8 Meeting

III. Announcements
IV. Staff Director's Report
- Report on Lean Six Sigma Process

V. Management and Operations
- Reporting of Commissioner Appointment Status
- Status of FY 2008 Budget
- Status of FY 2009 Budget

VI. Program Planning
- Briefing Report on Racial Categorization in the Census
- Proposed Changes to 2008 Briefing Schedule
- Proposed Changes to 2009 Briefing Schedule
- 2010 Program Planning Proposals

VII. State Advisory Committee Issues
- Ohio SAC
- New Jersey SAC
- Rhode Island SAC
- Texas SAC
- Vermont SAC

VIII. Future Agenda Items
IX. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8582.

Dated: February 26, 2008.

David Blackwood,

General Counsel.

[FR Doc. 08–913 Filed 2–26–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 080122071–8073–01]

Notice and Request for Comments on Proposed Establishment of a Laboratory Accreditation Program for Laboratories Performing Interoperability, Performance, and Conformance Biometrics Testing Under the National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and Request for Comments.

SUMMARY: The National Institute of Standards and Technology (NIST) publishes this notice requesting comments on the proposed establishment of an accreditation program for laboratories that perform biometric testing including interoperability, performance, and conformance using internationally recognized standards developed by the American National Standards Institute (ANSI), NIST, and by the International Committee for Information Technology Standards (INCITES). Additional standards may be identified throughout the development of the accreditation program technical requirements.

DATES: Comments must be received by March 31, 2008.

ADDRESSES: National Voluntary Laboratory Accreditation Program, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140 or by sending e-mail to: *nvlap@nist.gov.*

FOR FURTHER INFORMATION CONTACT: Brad Moore, Program Manager, NIST/NVLAP, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140, Phone: (301) 975–5740 or e-mail: *brad.moore@nist.gov.* Information regarding National Voluntary Laboratory Accreditation Program (NVLAP) and the accreditation process can be obtained from *http://www.nist.gov/nvlap.*

SUPPLEMENTARY INFORMATION:

Background

The United States Department of Homeland Security (DHS) requested that NIST establish a laboratory accreditation program for laboratories performing interoperability, performance and conformance biometrics testing on Personal Identification Verification equipment used in Homeland Security Applications. Biometric technologies such as facial, fingerprint, retinal, and voice recognitions are used to verify the identity of individuals attempting to gain access to secure areas. The purpose of the proposed Biometrics Laboratory Accreditation Program is to evaluate testing laboratories' technical competencies against known standards and testing criteria that will ultimately be used to provide confidence in the performance of biometric sub-systems.

Upon the request from DHS, NVLAP requests comments on the proposed establishment of an accreditation program for laboratories performing interoperability, performance, and conformance biometrics testing. This notice is issued in accordance with NVLAP procedures and general requirements, found in title 15 part 258 of the Code of Federal Regulations. NIST will also consult with interested parties through public workshops that will be announced at a later date.

Technical Requirements for the Accreditation Process

NVLAP accreditation criteria are established in accordance with the Code of Federal Regulations (CFR, Title 15, Part 285). NVLAP accreditation is in full conformance with the standards of the International Organization for Standards (ISO) and the International Electrotechnical Commission Standardization (IEC), including ISO/IEC 17025.

Accreditation will be granted to a laboratory following successful completion of a process, which will include submission of an application and payment of fees by the laboratory, an on-site assessment by technical experts, resolution of any nonconformities identified during the on-site assessment, and participation in proficiency testing. The accreditation will be formalized though insurance of a Certificate of Accreditation and Scope of Accreditation.

NVLAP provides an unbiased, third-party evaluation and recognition of competence. NVLAP accreditation signifies that a laboratory has demonstrated that it operates in accordance with NVLAP management and technical requirements pertaining to quality systems, personnel, accommodation and environment, test and calibration methods, equipment, measurement traceability, sampling, handling of test and calibration items, and test and calibration reports.

NVLAP accreditation does not imply any guarantee (certification) of laboratory performance or test/calibration data. NVLAP accreditation is a finding of laboratory competence.

Paperwork Reduction Act Clearance: This action contains a collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995. Collection activities for NVLAP are currently approved by OMB under control number 0693–0003. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

E.O. 12866: This action has been determined to be not significant under Executive Order 12866.

Dated: February 22, 2008.

Richard F. Kayser,

Acting Deputy Director.

[FR Doc. E8–3938 Filed 2–28–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: DoD.

ACTION: Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting will take place:

1. *Name of Committee:* Defense Advisory Committee on Military Personnel Testing.

2. *Date:* Wednesday, March 19, 2008 and Thursday, March 20, 2008.

3. *Time:* From 8:30 a.m. to 4 p.m. on Wednesday and 8:30 to Noon on Thursday.

4. *Location:* The meeting will be held at Le Pavillon Hotel, 833 Poydras Street, New Orleans, LA 70112.

5. *Purpose of the Meeting:* The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests.

6. *Agenda:* The agenda includes an overview of current enlistment test development timelines and planned research for the next three years. In addition, the recently completed Initial Operational Test and Evaluation results for new test forms will be presented to the Committee for their review and implementation recommendations.

7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

8. *Committee's Designated Federal Officer or Point of Contact:* Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than March 16, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Jane Arabian, 703–697–9271.

Dated: February 25, 2008.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E8–3907 Filed 2–28–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Understanding Adversaries will meet in closed session on March 17–18, 2008 at Strategic Analysis, Inc., 4075 Wilson Blvd., Suite 200, Arlington, VA 22203.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. These meetings are to identify and assess current relevant science and technology investment plans, to include research, analysis, tools and techniques.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: CDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Dated: February 25, 2008.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E8–3894 Filed 2–28–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Deterrence Skills will meet in closed session on March 26–27, 2008 at Strategic Analysis, Inc., 4075 Wilson Blvd., Suite 200, Arlington, VA 22203.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: assess all aspects of nuclear deterrent skills as well as the progress Department of Energy (DoE) has made since the publication of the Chiles Commission report.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: CDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Dated: February 25, 2008.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E8–3895 Filed 2–28–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Integrating Commercial Systems into the DoD: Effectively and Efficiently will meet in closed session on July 28–29, 2008; at Strategic Analysis, Inc., 4075 Wilson Blvd., Suite 200, Arlington, VA 22203.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the task force will review the administration of technical authority within DoD and develop recommendations on how to effectively and efficiently integrate commercial

components and systems within the DoD.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the July 28–29, 2008 meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTRACT: Major Charles Lominac, USAF, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *charles.lominac@osd.mil*, or via phone at (703) 571–0081.

Dated: February 25, 2008.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E8–3896 Filed 2–28–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0131]

Frozen Concentrate for Lemonade Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Florida's Natural Growers, to market test a product designated as ''Frozen Concentrate for Lemonade 3+1 Ratio'' that deviates from the U.S. standard of identity for frozen concentrate for lemonade. The purpose of the temporary permit is to allow the applicant to measure customer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the permit holder introduces or causes the introduction of the test product into interstate commerce, but not later than May 29, 2008.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Florida's Natural Growers, a division of Citrus World, Inc., 20205 U.S. Highway 27N, Lake Wales, Florida 33853.

This permit covers limited interstate marketing tests of products identified as ''Frozen Concentrate for Lemonade 3+1 Ratio'' that deviate from the U.S. standard of identity for frozen concentrate for lemonade (21 CFR 146.120) in that the frozen concentrate for lemonade is a 3 + 1 fold dilution with a 56° Brix (measure of concentration of sugars in juice) rather than the 48° Brix as required in the standard. When diluted according to directions that appear on the label, the test product contains not less than 0.70 grams of acid per 100 milliliters and not less than 10.5 percent by weight of soluble solids. The test product meets all the requirements of the standard with the exception of the 3 + 1 fold dilution. The purpose of this temporary permit is to test the product throughout the United States, in order to allow the applicant to measure customer acceptance of the product, identify mass production problems, and assess commercial feasibility.

This permit provides for the temporary marketing of a total of 20,000 cases per year of 12 x 32 ounce cartons (240,000 cartons). The total fluid quantity covered by this application is 227,100 liters (60,000 gallons). The test product will be manufactured at Florida's Natural Growers, a division of Citrus World, Inc., located at 20205 U.S. Highway 27N, Lake Wales, Florida 33853. Florida's Natural Growers will distribute the test product throughout the United States. The information panel of the labels must bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the permit holder introduces or causes the introduction of the product into interstate commerce, but not later than (see **DATES**).

Dated: February 25, 2008.

Barbara Schneeman,

Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. E8–3912 Filed 2–28–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2008–OS–0013]

Privacy Act of 1974; System of Records

AGENCY: DoD; Defense Information Systems Agency.

ACTION: Notice to Amend a System of Records.

SUMMARY: Defense Information Systems Agency proposes to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as

amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 25, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

K890.01

SYSTEM NAME:

Freedom of Information Act File (FOIA) (August 23, 1995, 60 FR 43778).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''General Counsel (RGC) Headquarters, Defense Information Systems Agency, P.O. Box 4502, Arlington, VA 22204–2199.

Decentralized—DISA Field Activities World-wide. Official mailing addresses are published as an appendix to DISA's compilation of systems of records notices.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Consists of (1) Policy File that contains DOD Directive 5400.7–R, DoD Freedom of Information Act Program; DISA Instruction 630–225–8–DISA, Freedom of Information Act Program. (2) Log File, which consists of a record of all written requests, names, addresses and phone numbers of requestors who request information under the FOIA which has been processed within DISA since January 1, 1996. (3) Correspondence received in DISA relating to FOIA, including replies thereto.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 552, Freedom of Information Act and DOD Directive 5400.7–R, DoD Freedom of Information Act Program.

PURPOSE(S):

Delete entry and replace with ''For making available to the public the maximum amount of information concerning the operations and activities of DISA. *DISA Management*—to receive, process, and respond to requests for information under FOIA. *General Counsel, DISA*—to review and deny requests for information under provisions of FOIA and to forward applicable correspondence to the Director, DISA when the denial may be contested or appealed. DOD and Department of Justice—for review and in event of judicial action.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by the control number and the name of the individual who requested the information.''

SAFEGUARDS:

Delete entry and replace with ''Records are stored in a locked safe. Records pertaining to policy are permanent. Correspondence maintained for two years, then destroyed. Records are maintained in areas accessible only to authorized personnel.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''All records are retained by Office of General Counsel, Headquarters, DISA, for two years. Logs are kept until reference need expires.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''FOIA Officer, Headquarters, Defense Information Systems Agency, Code GC, P.O. Box 4502, Arlington, VA 22204–2199.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Information Systems Agency ATTN: FOIA Officer Code GC, P.O. Box 4502, Arlington, VA 22204–2199.

Requests should contain individual's name, current address, and phone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address inquiries to the FOIA Officer, Defense Information Systems Agency Code GC, P.O. Box 4502, Arlington, VA 22204–2199.

Requests should contain individual's name, current address, and phone number.''

CONTESTING RECORD PROCEDURES:

Delete DISA Instruction 630–225–8 and replace with ''DISA Instruction 210–225.''

* * * * *

[FR Doc. E8–3914 Filed 2–28–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of Invention Described in U.S. Provisional Patent Application Concerning Identification of Staphylococcal Enterotoxin-B (SEB) Sequences Involved in Cell Proliferation and Cell Death

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.4, 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Provisional Patent Application No. 60/853,906 entitled ''Identification of Staphylococcal Enterotoxin-B (SEB) Sequences Involved in Cell Proliferation and Cell Death,'' filed October 24, 2006. Foreign rights are also available (PCT/US2007/022473). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, *ATTN:* Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to bacterial peptides, specifically Staphylococcus Enterotoxin B (SEB) peptides that have therapeutic use. The invention further relates to the use of SEB peptides in the diagnosis and therapy of diseases associated with cell proliferation.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–3916 Filed 2–28–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for 408 Permission and 404 Permit to Three Rivers Levee Improvement Authority for the Feather River Levee Repair Project, California, Segment 2

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken is the preparation of an Environmental Impact Statement (EIS) for the issuance of both the 408 permission to the Central Valley Flood Protection Board and 404 Permit to Three Rivers Levee Improvement Authority (TRLIA) for their work on the Feather River Levee Repair Project (FRLRP). Under 33 U.S.C. 408, the Chief of Engineers grants permission to alter an existing flood control structure if it is not injurious to the public interest and does not impair the usefulness of such work. Under section 404 of the Clean Water Act, the District Engineer permits the discharge of dredged or fill material into waters of the United States if the discharge meets the requirements of the Environmental Protection Agency's 404(b)(1) guidelines and is not contrary to the public interest. The FRLRP is located in Yuba County, CA. TRLIA is requesting this permission and permit in order to complete construction along the east levee of the Feather River.

DATES: A public scoping meeting will be held March 10, 2008, 6:30 to 8:30 at the Yuba County Government Center, 915 8th Street, Marysville, CA. Send written comments by April 9, 2008 to the address below.

ADDRESSES: Send written comments and suggestions concerning this study to Mr. John Suazo, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–R), 1325 J Street, Sacramento, CA 95814. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be addressed to John Suazo at (916) 557–6719, e-mail: *john.suazo@usace.army.mil* or by mail to (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The U.S. Army Corps of Engineers is preparing an EIS to analyze the impacts of the work proposed by TRLIA from the implementation of the FRLRP, Segment 2. The FRLRP, Segment 2 is being constructed by TRLIA to improve flood protection to portions of Yuba County and Reclamation District (RD) 784.

2. *Alternatives.* The EIS will address an array of flood control improvement alternatives along Segment 2. Alternatives analyzed during the investigation will include a combination of one or more flood protection measures. These measures include seepage berms, stability berms, setback levees, seepage cutoff walls, and relocation of a pump station.

3. *Scoping Process.* a. The Corps has initiated a process to involve concerned individuals, and local, State, and Federal agencies. A public scoping meeting will be held on March 10, 2008 to present information to the public and to receive comments from the public.

b. Significant issues to be analyzed in depth in the EIS include effects on hydraulic, wetlands and other waters of the U.S., vegetation and wildlife resources, special-status species, cultural resources, land use, fisheries, water quality, air quality, transportation, and socioeconomics; and cumulative effects of related projects in the study area.

c. The Corps is consulting with the State Historic Preservation Officer to comply with the National Historic Preservation Act, and the National Marine Fisheries Service and the U.S. Fish and Wildlife Service to comply with the Endangered Species Act. Coordination with the National Marine Fisheries Service has been completed; coordination with U.S. Fish and Wildlife Service is still ongoing.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft EIS. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft EIS circulation.

4. *Availability.* The draft EIS is scheduled to be available for public review and comment in early 2008.

Dated: February 22, 2008.

Thomas C. Chapman,

COL, EN, Commanding.

[FR Doc. E8–3919 Filed 2–28–08; 8:45 am]

BILLING CODE 3710–EZ–P

DEPARTMENT OF DEFENSE

Department of the Army; Army Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for the American River Common Features General Reevaluation Report, Sacramento, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers; DOD.

ACTION: Notice of intent.

SUMMARY: The action being taken is the preparation of an environmental impact statement (EIS) for the American River Common Features General Reevaluation Report (GRR). The Common Features Project GRR will re-evaluate the currently authorized plan as well as develop and evaluate other viable alternatives, including a locally-preferred plan, with the goal of identifying a comprehensive plan that will lower the risk of flooding in and around the City of Sacramento. The Common Features Project GRR is located in Sacramento, Sutter and Yolo Counties, CA.

DATES: A series of public scoping meetings will be held as follows:

1. March 5, 2008, 5 to 7 p.m. at The Elk's Lodge.

2. March 6, 2008, 5 to 7 p.m. at Arden Park Community Center, Room A.

3. March 10, 2008, 3 to 6 p.m. at The Library Galleria East Meeting Room.

4. March 13, 2008, 5 to 7 p.m. at The Sierra Health Foundation.

Send written comments by April 11, 2008 to the address below.

ADDRESSES: Written comments and suggestions concerning this study may be submitted to Ms. Elizabeth Holland, U.S. Army Corps of Engineers, Sacramento District, Attn: Planning Division (CESPK–PD–R), 1325 J Street, Sacramento, CA 95814. Requests to be placed on the mailing list should also be sent to this address. The location of the public meetings is as follows; The Elks Lodge, 6446 Riverside Blvd., Sacramento, CA; Arden Park Community Center, 1000 La Sierra Drive, Sacramento, CA; Library Galleria, 828 ''I'' Street, Sacramento, CA; and Sierra Health Foundation, 1321 Garden Highway, Sacramento, CA.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be addressed to Liz Holland at (916) 557–6763, e-mail *Elizabeth.g.holland@usace.army.mil* or by mail to (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* The U.S. Army Corps of Engineers is preparing an EIS

to analyze the impacts of a range of alternatives that would lessen the risk of flooding in and around the City of Sacramento.

2. *Alternatives.* The EIS will address an array of flood control improvement alternatives that are intended to reduce flood risk within the project area. Alternatives analyzed during the investigation will include a combination of one or more flood protection measures. These measures include levee improvements (e.g., seepage berms, adjacent setback levees, seepage wells, seepage cutoff walls), revisions to system hydraulics through setbacks, levee raises, and/or more diversion of flow into the bypass system, and possible use of upstream lands for detention.

3. *Scoping Process.* a. A series of public scoping meeting will be held in early March, 2008 to present information to the public and to receive comments from the public. These meetings are intended to initiate the process to involve concerned individuals, and local, State, and Federal agencies.

b. Significant issues to be analyzed in depth in the EIS include effects on hydraulics, wetlands and other waters of the U.S., vegetation and wildlife resources, special-status species, esthetics, cultural resources, recreation, land use, fisheries, water quality, air quality, transportation, and socioeconomics; and cumulative effects of related projects in the study area.

c. The Corps is consulting with the State Historic Preservation Officer to comply with the National Historic Preservation Act and the U.S. Fish and Wildlife Service and National Marine Fisheries Service to comply with the Endangered Species Act. The Corps is also coordinating with the U.S. Fish and Wildlife Service to comply with the Fish and Wildlife Coordination Act.

d. A 45-day public review period will be provided for individuals and agencies to review and comment on the draft EIS. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft EIS circulation.

4. *Availability.* The draft EIS is scheduled to be available for public review and comment in spring 2010.

Dated: February 15, 2008.

Thomas C. Chapman,

COL, EN, Commanding.

[FR Doc. E8–3922 Filed 2–28–08; 8:45 am]

BILLING CODE 3710–EZ–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research and Resources Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) will meet to discuss National Ocean Research Leadership Council (NORLC) and Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI) activities. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Tuesday, April 15, 2008 from 8 a.m. to 5:30 p.m. and Wednesday, April 16, 2008 from 8 a.m. to 1:30 p.m.

ADDRESSES: The meetings will be held at the Consortium for Ocean Leadership located at 1201 New York Ave, Suite 420, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone: 703–696–4118.

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research to applications, ocean observing, professional certification programs, and other current issues in the ocean science and resource management communities. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit written comments at least one week prior to the meeting to Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone: 703–696–4118.

Dated: February 22, 2008.

T.M. Cruz,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–3893 Filed 2–28–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2008–0008]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 25, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01000–3

SYSTEM NAME:

Navy Individual Service Review Board (ISRB) Proceedings Application File (March 18, 1997, 62 FR 12806).

CHANGES:

SYSTEM NAME:

Delete entry and replace with ''DoD Civilian/Military Service Review Board.''

SYSTEM LOCATION:

Delete entry and replace with ''Navy Personnel Command (PERS–312), 5720

Interity Drive, Millington, TN 38055–3120).''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''DD Form 2168—Application of Member or Survivor of Member of Group certified to have performed active duty with the Armed Forces of the United States; supporting documentation; copies of correspondence between the individual; and, other correspondence concerning the case.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Pub. L. 95–202; DoD Directive 1000.20, ''Determinations of Active Military Service and Discharge Civilian or Contractual Personnel; and E.O. 9397 (SSN).''

PURPOSE(S):

Add at end of entry ''under Public Law 95–202 for the purpose of benefits from the Department of Veterans Affairs.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper files and electronic media.''

SAFEGUARD:

Delete entry and replace with ''The files are kept within the Navy Personnel Command (NPC) offices. Access during business hours is controlled by NPC personnel. Records not in use are maintained in a room which is locked during non-duty hours. NPC is secured at the close of business and the building in which NPC is located has limited access controlled by security system.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Approved applications received at Navy Personnel Command since 1997 necessitate creation of a service record which is part of the Navy Electronic Military Personnel Records System (EMPRS). Approved applications that resulted in the creation of a Navy service records prior to 1997 is maintained by the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100. Disapproved applications and associated correspondence are retained at NPC for two years and then destroyed.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Personnel Command (PERS–212), 5720 Integrity Drive, Millington, TN 38055–3120.

Request should contain name and SSN and be signed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Navy Personnel Command (PERS–212), 5720 Integrity Drive, Millington, TN 38055–3120.

Request should contain name and SSN and be signed.''

* * * * *

N01000–3

SYSTEM NAME:

DoD Civilian/Military Service Review Board.

SYSTEM LOCATION:

Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DD Form 2168—Application of Member or Survivor of Member of Group certified to have performed active duty with the Armed Forces of the United States; supporting documentation; copies of correspondence between the individual; and other correspondence concerning the case.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for discharge, supporting documentation, copies of correspondence between the individual and the Navy ISRB and other correspondence concerning the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–202; DoD Directive 1000.20, ''Determinations of Active Military Service and Discharge Civilian or Contractual Personnel; and E.O. 9397 (SSN).''

PURPOSE(S):

To consider the individual's application for military status and discharge under Public Law 95–202 for the purpose of benefits from the Department of Veterans Affairs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and electronic media.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Delete entry and replace with ''The files are kept within the Navy Personnel Command (NPC) offices. Access during business hours is controlled by NPC personnel. Records not in use are maintained in a room which is locked during non-duty hours. NPC is secured at the close of business and the building in which NPC is located has limited access controlled by security system.

RETENTION AND DISPOSAL:

Approved applications received at Navy Personnel Command since 1997 necessitate creation of a service record which is part of the Navy Electronic Military Personnel Records System (EMPRS). Approved applications that resulted in the creation of a Navy service records prior to 1997 is maintained by the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100. Disapproved applications and associated correspondence are retained at NPC for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (PERS–212), 5720 Integrity Drive, Millington, TN 38055–3120.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Personnel Command (PERS–212), 5720 Integrity Drive, Millington, TN 38055–3120.

Request should contain name and SSN and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Navy Personnel Command (PERS–212), 5720 Integrity Drive, Millington, TN 38055–3120.

Request should contain name and SSN and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the individual or those acting on the individual's behalf, from other military records and from the Department of Defense Civilian/Military Service Review Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–3909 Filed 2–28–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2008–0010]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Navy is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 31, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 25, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05100–4

SYSTEM NAME:

Driver Record Monitoring System (DRMS) (February 13, 2008, 73 FR 8298).

CHANGES:

* * * * *

SYSTEM IDENTIFIER:

Delete ''NM05100–4'' and replace with ''NM05100–6''.

* * * * *

NM05100–6

SYSTEM NAME:

Driver Record Monitoring System (DRMS).

SYSTEM LOCATION:

Primary Location: SAMBA Holdings, 1730 Montano Road NW., Albuquerque, NM 87101–3200.

Secondary Locations: Navy and Marine Corps activities. Official mailing addresses as published in the Standard Navy Distribution List that is available at: *http://doni.daps.dla.mil/sndl.aspx*.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy and Marine Corps active duty and reserve personnel with a driver's license issued by a U.S. state or territory.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, driver's license number, state of license, pay grade, sex, and state driving records/histories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and 18 U.S.C. 2721, Drivers Privacy Protection Act.

PURPOSE(S):

To identify Navy and Marine Corps members (officers and enlisted) whose driving habits may indicate they pose a threat to health/safety and identify required training, counseling, mentoring, etc., that would result in preventing future accidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To provide state department of motor vehicles offices with the full names, state of driver license, driving license numbers, sex, and dates of birth of Navy and Marine Corps personnel for purpose of identifying and collecting driving records/histories for use by Navy and Marine Corps personnel.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name and driver's license number.

SAFEGUARDS:

Computer facilities and terminals are located in areas accessible only by authorized personnel who are properly screened, cleared, and trained to work with automated systems of records. Computer terminals are protected by passwords, unique user IDs, and applicable layers of security access within the applications. Electronic and paper computer printouts and reports are made available only to authorized personnel having an official need-to-know.

RETENTION AND DISPOSAL:

Records are destroyed two years after individual completes program.

SYSTEM MANAGER(S) AND ADDRESS:

Marine Corps: Commandant of the Marine Corps, Safety Division, Ground Branch, 2 Navy Annex, Washington, DC 20380–1775.

Navy: Commander, Naval Surface Forces (N41IH), 2841 Rendova Road, San Diego, CA 92155–5490.

Record Holders: Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to their commanding officer. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx*.

Written requests should contain the member's full name and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to their commanding officer. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://doni.daps.dla.mil/sndl.aspx.*

Written requests should contain the member's full name and signature of the requester.

CONTESTING RECORD PROCEDURES:

The Navy's rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the System of Records Manager.

RECORD SOURCE CATEGORIES:

Individual; driving records; and activity records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–3915 Filed 2–28–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 29, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 26, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Annual Progress Report for the Title III Alternative Financing Program Under the Assistive Technology Act of 1998.

Frequency: On Occasion; Annually.

Affected Public: Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 33.

Burden Hours: 974.

Abstract: Title III of the Assistive Technology Act of 1998 as in effect prior to the amendments of 2004 (Pub. L. 105–394) (AT Act of 1998) authorized grants to public agencies to support the establishment and maintenance of alternative financing programs (AFPs) that feature one or more alternative financing mechanisms to enable individuals with disabilities and their family members, guardians, advocates, and authorized representatives to purchase assistive technology (AT). Section 307 of Title III requires that the Rehabilitation Services Administration (RSA) submit to Congress an annual report on the activities conducted under that title. In order to meet this requirement, states must provide annual progress reports to RSA. This annual report is a web-based data collection system developed based upon the instrument submitted for review herein.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3627. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–3953 Filed 2–28–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Cancellation of Environmental Impact Statement for Implementation of the Low-Emission Boiler System (LEBS) Proof-of-Concept System, Elkhart, IL

AGENCY: Department of Energy.

ACTION: Notice of Cancellation of Environmental Impact Statement Process.

SUMMARY: The Department of Energy (DOE) is cancelling the preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for a proposal by Babcock Borsig Power to design, construct, and operate an advanced pulverized coal-fired power facility using a low emission boiler system (LEBS) at Elkhart, Illinois.

The proposed project would have been developed and operated by Cornbelt Energy and would have been built on land adjacent to an existing underground coal mine owned and operated by Turris Coal Company on a site in central Illinois.

DOE's proposed action was to provide cost-shared funding of approximately $33.5 million (about 23.5% of the total expected project cost of approximately $142.5 million). DOE announced its

intent to prepare an EIS in the **Federal Register** on December 19, 1996 (61 FR 67003). DOE issued a Draft EIS (DEIS) for public comment on March 5, 2004 (69 FR 10442). Subsequently, the industrial participant communicated to DOE that it was unable to secure the funds needed to complete the proposed project.

Accordingly, DOE has determined to not pursue the proposed action, and is terminating the NEPA review process for the proposed project.

FOR FURTHER INFORMATION CONTACT: John Ganz, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 880, Morgantown, WV 26507–0880 by telephone (304) 285–5443, or electronic mail to *John.Ganz@netl.doe.gov*.

Issued in Pittsburgh, PA this 19th day of February, 2008.

Ralph A. Carabetta,

Deputy Director, National Energy Technology Laboratory.

[FR Doc. E8–3923 Filed 2–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 26, 2008. 2 p.m–8 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Christina Houston.
Establishment of a Quorum.
Welcome, Ed Moreno.
Approval of Agenda, Fran Berting.
Approval of Minutes of January 30, 2008, Board Meeting, Fran Berting.
2:05 p.m. Old Business, Ed Moreno.
A. Questions/Answers on Written Reports from Board Chair, DDFO and Executive Director.
B. Other Matters.
2:15 p.m. New Business, Ed Moreno.
A. Board Effectiveness, Larry Rapagnani.
- Stakeholder and DOE Responsiveness Surveys.

B. First Reading—Proposed Amendments to NNMCAB Bylaws, Menice Santistevan.
2:45 p.m. Committee Business/Reports.
A. Environmental Monitoring, Surveillance and Remediation Committee, Pam Henline.
- Introduction of Draft Recommendation(s).

B. Waste Management Committee, Ralph Phelps.
- Report on April 16th NNMCAB Sponsored Forum.

3:30 p.m. Break.
3:45 p.m. Reports from Liaison Members.
New Mexico Environment Department, James Bearzi.
U.S. Environmental Protection Agency, Rich Mayer.
Los Alamos National Security, LLC, Sue Stiger.
DOE, EM Fiscal Year 2009 Budget, George Rael.
5 p.m. Public Comment, Ed Moreno.
5:15 p.m. Dinner Break.
6 p.m. Presentation—How Does Los Alamos National Laboratory Conduct Risk Assessment?, Rick Miranda.
6:45 p.m. Questions/Answers on Presentation, Ed Moreno.
7:15 p.m. Round Robin, Ed Moreno and Board Members.
7:45 p.m. Recap of Meeting: Issuance of Press Releases, Editorials, etc., Ed Moreno.
8 p.m. Adjourn, Christina Houston.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/minutes/board-minutes.htm.*

Issued at Washington, DC on February 25, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–3902 Filed 2–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 20, 2008. 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

6 p.m. Call to Order, Introductions, Review of Agenda.
6:10 p.m. Deputy Designated Federal Officer's Comments.
6:30 p.m. Federal Coordinator's Comments.
6:35 p.m. Liaisons' Comments.

6:45 p.m. Presentation.
7 p.m. Public Comments.
7:15 p.m. Administrative Issues
- Motions.
- Review of Work Plan.
- Review Next Agenda.

8 p.m. Final Comments.
8:15 p.m. Adjourn.
Breaks taken as Appropriate.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/minutes.htm.*

Issued at Washington, DC, on February 25, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–3926 Filed 2–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Advisory Committee (NEAC) 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: Tuesday, March 18, 2008, and will tentatively meet from 8 a.m. until 5:15 p.m.. and Wednesday, March 19, 2008, and will tentatively meet from 9 a.m. until 11:30 a.m.

ADDRESSES: Marriott Crystal City, 1999 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. John Boger, Designated Federal Officer, U.S. Department of Energy, 19901 Germantown Rd, Germantown, MD 20874; telephone (301) 903–4495; e-mail *john.boger@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Nuclear Energy Advisory Committee (NEAC), formerly the Nuclear Energy Research Advisory Committee (NERAC), was established in 1998 by the U.S. Department of Energy (DOE) to provide independent, expert advice on complex scientific, technical, and policy issues that arise in the planning, managing, and implementation of DOE's civilian nuclear energy research programs. The committee is composed of 12 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of the Meeting: To inform the committee of recent developments and current status of research programs and projects pursued by the Department of Energy's Office of Nuclear Energy and receive advice and comments in return from the committee.

Tentative Agenda: The two-day meeting is expected to include presentations that cover such topics as the current status of the Global Nuclear Energy Partnership (GNEP), Next Generation of Nuclear Power, Nuclear Power 2010, and Idaho National Laboratory. The agenda may change to accommodate committee business. For updates, one is directed the NEAC Web site: *http://www.ne.doe.gov/neac/neNeacOverview.html.*

Public Participation: Individuals and representatives of organizations who would like to offer comments and suggestions may do so on the second day of the meeting, Wednesday, March 19, 2008. Approximately one-half hour will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed 5 minutes. Anyone who is not able to make the meeting or has had insufficient time to address the committee is invited to send a written statement to Dr. John Boger, 19901 Germantown Rd, Germantown, MD 20874, or e-mail *john.boger@hq.doe.gov.*

Minutes: The minutes of meeting will be available on the Department of Energy, Office of Nuclear Energy Web site at: *http://www.ne.doe.gov/neac/neNeacOverview.html.*

Issued in Washington, DC, on February 26, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–3927 Filed 2–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Amended Record of Decision for the Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, UT

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Amended Record of Decision.

SUMMARY: The U.S. Department of Energy (DOE) is amending its decision regarding the transportation method that DOE will use to relocate uranium mill tailings and other contaminated materials (residual radioactive material) at the Moab milling site and vicinity properties in Utah. In its *Record of Decision for the Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah* (70 FR 55358; September 21, 2005), DOE had decided to relocate the residual radioactive material using predominately rail, with truck transport for some oversized materials. Under this amended Record of Decision (ROD), DOE will use either truck and/or rail for all materials.

This ROD amendment is essential to give DOE flexibility needed to expedite completion of the Moab, Utah, Uranium Mill Tailings Remedial Action (UMTRA) Project. Expediting completion is in accordance with Congressional direction (Section 3402 of the National Defense Authorization Act for 2008 (Pub. L. 110–181)). This ROD amendment meets the strong stakeholder desire to relocate the residual radioactive material as soon as practicable by accelerating the date of the first shipment because truck shipments could start sooner since the logistics of initiating the rail alternative would require time to safely implement (i.e. building the hillside loadout infrastructure). In addition long-term risks would be reduced through earlier completion, and reducing total project costs would be reduced through greater flexibility and competition between rail and truck transporters.

DOE analyzed several transportation methods in its *Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Final Environmental Impact Statement* (DOE/EIS–0355)(Final EIS), issued in August 2005. An all truck option was among the

reasonable alternative methods analyzed in the Final EIS for transporting the residual radioactive material. This ROD amendment allows an increase in the quantity to be shipped by truck. All other aspects of DOE's original decision remain unchanged, including that DOE will relocate the residual radioactive material at the Moab site and vicinity properties to a new disposal site 30 miles north at Crescent Junction, Utah, and will conduct active remediation of contaminated groundwater at the Moab site.

This ROD amendment has been prepared in accordance with the regulations of the Council on Environmental Quality (Title 40 *Code of Federal Regulations* [CFR] parts 1500–1508) for implementing the National Environmental Policy Act (NEPA) and DOE's NEPA Implementing Procedures (10 CFR part 1021). Based on information previously provided in the Final EIS, DOE has determined that no further review under NEPA is required.

ADDRESSES: Copies of this ROD amendment may be requested by contacting Mr. Donald Metzler, Moab Federal Project Director, U.S. Department of Energy, by mail: 200 Grand Avenue, Grand Junction, Colorado, 81501; by phone: 1–800–637–4575 or 1–970–257–2115; by fax: 1–970–257–2175; or e-mail: *moabcomments@gjem.doe.gov.* This ROD amendment will be available on the DOE NEPA Web site, at *http://www.eh.doe.gov/nepa/documents.html,* and on the project Web site at *http://www.gjem.energy.gov/moab/.*

FOR FURTHER INFORMATION CONTACT: For further information on this amended ROD, contact Donald Metzler, as indicated in the **ADDRESSES** section above. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 1–202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: DOE analyzed several transportation methods in its *Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Final Environmental Impact Statement* (DOE/EIS–0355) (Final EIS), issued in August 2005. An all truck option was among the reasonable alternative methods analyzed in the Final EIS for transporting the residual radioactive material. DOE also analyzed transportation by rail and slurry pipeline. In DOE's original ROD, issued in September 2005, DOE had decided to relocate the residual radioactive material using predominately rail, with truck transport for some oversized materials. Under this amended Record of Decision (ROD), DOE will use truck and/or rail for all materials.

This ROD amendment allows an increase in the quantity to be shipped by truck. All other aspects of DOE's original decision remain unchanged, including that DOE will relocate the residual radioactive material at the Moab site and vicinity properties to a new disposal site 30 miles north at Crescent Junction, Utah, and will conduct active remediation of contaminated groundwater at the Moab site.

This ROD amendment has been prepared in accordance with the regulations of the Council on Environmental Quality (Title 40 *Code of Federal Regulations* [CFR] parts 1500–1508) for implementing the National Environmental Policy Act (NEPA) and DOE's NEPA Implementing Procedures (10 CFR part 1021). Based on information previously provided in the Final EIS, DOE has determined that no further review under NEPA is required.

Basis for Decision: Trucking will be performed primarily during daylight hours, thus minimizing potential safety hazards. The trucking option allows DOE more control over the schedule by giving the additional flexibility to supplement rail transport and avoid potential project delays.

This ROD amendment is essential to give DOE flexibility needed to expedite completion of the Moab, Utah, Uranium Mill Tailings Remedial Action (UMTRA) Project. Expediting completion is in accordance with Public Law 110–181, which directs DOE to complete remediation of the Moab site and the removal of the tailings to the Crescent Junction site in Utah by October 1, 2019 and, if DOE is unable to do so, DOE must submit a plan to Congress by October 2, 2019, with the projected completion date and estimated funding. This ROD amendment meets the strong stakeholder desire to relocate the residual radioactive material as soon as practicable by accelerating the date of the first shipment, reducing long-term risks through earlier completion, and reducing total project costs through greater flexibility and competition between rail and truck transporters. This amended decision incorporates all practicable means to avoid or minimize environmental harm. Although DOE identified in its original ROD rail transportation as part of the environmentally preferred alternative, the analyses in the Final EIS show that truck transportation also can be conducted in a safe and environmentally sound manner. In view of the acceleration of long-term risk reduction at the Moab site that use of both truck and rail will afford, DOE now regards rail and truck transportation as equally environmentally preferable.

Issued in Washington, DC, this 25th day of February 2008.

Inés R. Triay

Acting, Assistant Secretary for Environmental Management.

[FR Doc. E8–3931 Filed 2–28–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2493–084]

Puget Sound Energy, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

February 25, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2493–084.

c. *Date Filed:* December 6, 2007.

d. *Applicant:* Puget Sound Energy, Inc. (Puget).

e. *Name of Project:* Snoqualmie Falls Hydroelectric Project.

f. *Location:* The project is located on the Snoqualmie River, in the City of Snoqualmie, King County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Joel Molander, Puget Sound Energy, Inc., M/S PSE–09S, P.O. Box 90868, Bellevue, Washington 98009–0868; telephone (425) 462–3603.

i. *FERC Contact:* Linda Stewart, telephone: (202) 502–6680, and e-mail: *linda.stewart@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Request:* Puget proposes to modify the upgrades to the two powerhouses (Plants 1 and 2), as well as to the diversion dam, as authorized in the June 29, 2004 Order Issuing New License. At Plant 1, Puget proposes to remove the Machine Shop and Transformer House, and to temporarily relocate the Carpenter Shop and West Garage. Instead of retiring the five generating units at Plant 1 and replacing them with two new generating units, Puget also proposes to preserve generating units 1 through 4, and to replace generating unit 5. Puget proposes to remove and rebuild the Gatehouse and Powerhouse at Plant 2 in order to address seismic deficiencies and allow for improvements as required by the license. Instead of installing an inflatable rubber weir diversion dam as authorized in the license, Puget proposes to construct a fixed crest dam at a reduced height. Puget also proposes widening the channel on the left bank to provide additional flood protection and a better approach for flows entering Plant 1.

l. Please note that the underlying license is currently before the U.S. Court of Appeals for the Ninth Circuit. Any final Commission action would have to be by leave of the court.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' '' TERMS AND CONDITIONS,'' or ''FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, recommendations, terms and conditions or prescriptions should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

q. As provided for in 18 CFR 4.34(b)(5)(i), a license applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

r. *e-Filing:* Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''eFiling'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3886 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2085–000]

Southern California Edison Company; Notice of Authorization for Continued Project Operation

February 25, 2008.

On November 29, 2005, Southern California Edison Company, licensee for the Mammoth Pool Hydroelectric Project, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Mammoth Pool Project is located on the San Joaquin River in Fresno California.

The license for Project No. 2085 was issued for a period ending November 30, 2007. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2085 is issued to Southern California Edison Company, for a period effective December 1, 2007 through November

30, 2008, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2008, notice is hereby given that, pursuant to 18 CFR16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Southern California Edison Company, is authorized to continue operation of the Mammoth Pool Project until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3885 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–250–000; ER08–250–001]

Langdon Wind, LLC; Notice of Issuance of Order

February 25, 2008.

Langdon Wind, LLC (Langdon Wind) filed an application for market-based rate authority, with an accompanying market-based rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Langdon Wind also requested waivers of various Commission regulations. In particular, Langdon Wind requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Langdon Wind.

On February 21, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the request for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Langdon Wind, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is March 24, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Langdon Wind is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Langdon Wind, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Langdon Wind's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3884 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–41–000]

Bicent (California) Malburg LLC; Notice of Filing

February 25, 2008.

Take notice that on February 15, 2008, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2007), Bicent (California) Malburg LLC filed a Petition of Declaratory Order Disclaiming Jurisdiction.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3883 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS08–4–000]

Freebird Gas Storage, LLC; Notice of Filing

February 25, 2008.

Take notice that on February 15, 2008, pursuant to section 358.3(a)(3) of the regulations of the Federal Energy Regulatory Commission, Freebird Gas Storage, LLC filed a request for an

exemption from the Transmission Provider Standards of Conduct.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time, March 10, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3881 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–39–000]

New York Regional Interconnect, Inc.; Notice of Filing

February 25, 2008.

Take notice that on February 12, 2008, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2007), New York Regional Interconnect, Inc. filed a Petition of Declaratory Order for Incentive Rate Treatment.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 13, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3882 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF08–3021–000]

Southwestern Power Administration; Notice of Filing

February 25, 2008.

Take notice that on February 8, 2008, the Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested by the Department of Energy's Delegation Order Nos. 00–001.00C and 00–037.00, and by sections 302(a) and 301(b) of the Department of Energy Organization Act (Pub. L. 95–91), submitted for confirmation and approval on a final basis, Interim Rate Schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–F, CC–1–G, CK1–F, and CTV–1–F, effective February 25, 2008, through September 30, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 29, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3888 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–15–000]

Energy Transfer Fuel, L.P.; Notice of Petition for Rate Approval

February 25, 2008.

Take notice that on February 15, 2008, Energy Transfer Fuel, L.P. (ET Fuel) filed a petition for rate approval for NGPA section 311 maximum firm and interruptible transportation rates, pursuant to section 284.123(b)(2) of the Commission's regulations. ET Fuel requests that the Commission approve a maximum interruptible rate of $0.4099 per MMBtu and maximum firm usage rate of $0.0032 per MMBtu with a monthly reservation charge of $12.37 per MMBtu (a daily demand rate of $0.4067 per MMBtu). In addition, ET Fuel requests authority to retain 1.58% of the quantity of gas delivered for compressor fuel, company use, and lost and unaccounted-for gas.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Friday, March 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3887 Filed 2–28–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2004–0013; FRL–8535–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; EPA Strategic Plan Information on Source Water Protection; EPA ICR No. 1816.04, OMB Control No. 2040–0197

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on June 30, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 29, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2004–0013 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: OW–Docket@epa.gov.*
- *Mail:* Water Docket, Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* The EPA Docket Center at the Public Reading Room, Room B3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2004–0013. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Jill Dean, Drinking Water Protection Division—Prevention Branch, Office of Ground Water and Drinking Water (MC 4606M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–8241; fax number: 202–564–3756; e-mail address: *dean.jill@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2004–0013, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through

Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are State environmental and health agencies.

Title: EPA Strategic Plan Information on Source Water Protection.

ICR numbers: EPA ICR No. 1816.04, OMB Control No. 2040–0197.

ICR status: This ICR is currently scheduled to expire on June 30, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: States were allowed 18 months to submit a Source Water Assessment Program to EPA (Section 1453(a)(3) of the Safe Drinking Water Act) after the national guidance on State Source Water Assessment and Protection Programs was issued on August 5, 1997. Once the State Programs were approved by EPA, source water assessments of public water systems were conducted and completed within the required three and a half years after approval. Previous ICRs have included calculations of the burden and cost estimates related to the remaining assessment work.

The EPA Strategic Plan (2006–2011; *http://www.epa.gov/ocfo/plan/plan.htm*) provides an overview of the voluntary programs and measures taken by States to ensure minimal health risks to the public by protecting source water and preventing contamination. The information collection request supports the EPA Strategic Plan by gathering information on protective actions for sources of water used for public water supplies, and to measure progress towards the Strategic Target SP–4—public health risks minimized in 50% of community water systems and the related 62% of the population served by those community water systems by 2011.

EPA is collecting data from States, on a voluntary basis, concerning the number of community water systems (CWS) in localities that have substantially implemented source water protection programs according to that State's definition, and the population served by those community water systems. The Safe Drinking Water Act, while authorizing the generation of this data, does not require the implementation of source water protection programs by States. Section 1452 of the Safe Drinking Water Act allows the use of Drinking Water State Revolving Fund monies for support efforts in the information collection.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 hours per annual response for each respondent, or 3,120 hours over the next three years of the information collection. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 52.

Frequency of response: annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,040.

Estimated total annual costs: $786,676. This includes an estimated burden cost of $38,419 and an estimated cost of $748,257 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is a decrease of 3,172 hours in the total estimated annual respondent burden compared with that identified in the ICR currently approved by OMB.

This decrease reflects the fact that EPA is collecting less information from States under this collection than in earlier collections. Specifically, the 2004 ICR included the burden associated with reporting on the status of completing source water assessments and on the most prevalent and most threatening sources of contamination. EPA is no longer requesting this information because the assessments were completed in 2003, and contamination threats are not considered to have significantly changed since the previous ICR.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 21, 2008.

Cynthia Dougherty,

Director, Office of Ground Water & Drinking Water.

[FR Doc. E8–3934 Filed 2–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–2006–0735; FRL–8535–3]

Announcement of Data Availability for Lead National Ambient Air Quality Standard Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On or about March 3, 2008, the Office of Air Quality Planning and Standards (OAQPS) of EPA will make available for public review and comment a number of technical documents that discuss monitoring issues being addressed in EPA's review of the national ambient air quality standards (NAAQS) for lead. These technical documents will be used as part of a consultation with the Clean Air Scientific Advisory Committee (CASAC) Ambient Air Monitoring & Methods (AAMM) Subcommittee (Subcommittee).

DATES: Comments on the technical documents must be received on or before March 31, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0735, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OAR–2006–0735.
- *Fax:* Fax your comments to: 202–566–9744, Attention Docket ID. No. EPA–HQ–OAR–2006–0735.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0735.
- *Hand Delivery or Courier: Deliver your comments to:* EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket(s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0735. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*, or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC.

The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air Docket is (202) 566–1742; fax (202) 566–9744.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Office of Air Quality Planning and Standards (mail code C304–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *Cavender.kevin@epa.gov*; telephone: (919) 541–2364; fax: (919) 541–1903.

SUPPLEMENTARY INFORMATION:

A. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying

information (subject heading, **Federal Register** date and page number).

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

B. Background

Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.'' The EPA then issues air quality criteria for listed pollutants, which are commonly referred to as ''criteria pollutants.'' The air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities.'' Under section 109 of the CAA, EPA establishes NAAQS for each listed pollutant, with the NAAQS based on the air quality criteria. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and revise the NAAQS, if appropriate, based on the revised criteria.

Lead is one of six criteria pollutants for which EPA has established air quality criteria and NAAQS. Presently, EPA is reviewing the air quality criteria and NAAQS for lead.

As part of its review of the lead NAAQS, EPA is considering revising the associated monitoring requirements (contained in 40 CFR parts 50, 53, and 58). On December 12, 2007, an advanced notice of proposed rulemaking (ANPR) was published (72 FR 71488). The ANPR identified a number of potential revisions to the lead monitoring requirements. CASAC conducted a review of the ANPR in December 2007, and submitted a final letter on January 22, 2008 (EPA–CASAC–08–007) providing CASAC's advice and recommendations to the Agency on the policy options discussed in the ANPR. One of CASAC's recommendations was that a more detailed review of the monitoring issues should be conducted by the CASAC AAMM Subcommittee.

In this notice, EPA is announcing the availability of technical documents that provide useful information regarding a number of issues pertinent to the monitoring requirements for the Pb NAAQS. Specifically, these documents discuss the Pb NAAQS indicator options being considered, specifications and rationale for a Federal Reference Method (FRM) and Federal Equivalency Method (FEM) criteria, potential network design requirements, and potential revisions to the monitoring sampling frequency. The technical documents will be available online at: *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_cr_td.html* on or before March 3, 2008.

The EPA is soliciting advice and recommendations from the CASAC AAMM Subcommittee by means of consultation at an upcoming public teleconference of the CASAC AAMM Subcommittee. A separate **Federal Register** notice will inform the public of the date and phone number for the public teleconference. Following the CASAC AAMM Subcommittee public teleconference, EPA will consider comments received from the CASAC AAMM Subcommittee and the public in formulating any decisions regarding proposed revisions to the lead monitoring requirements as part of the lead NAAQS rulemaking.

Dated: February 22, 2008.

Jennifer N. Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E8–3935 Filed 2–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6696–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

Draft EISs

EIS No. 20070518, ERP No. D–COE–D40340–PA, Southern Beltway Transportation Project, Transportation Improvement between I–79 to Mon/Fayette Expressway (PA Turnpike 43), Application for U.S. Army COE section 404 Permit, Washington County, PA.

Summary: EPA expressed environmental concerns about potential impacts to wetlands, air quality, and environmental justice communities. Rating EC2.

EIS No. 20070529, ERP No. D–NCP–D61060–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.

Summary: EPA expressed environmental concerns about potential impacts to air quality and suggested the final EIS recommend use of ultra-low sulfur diesel fuel and particulate filters on construction equipment and that all Build Alternatives apply low impact development and green building technologies. The final EIS should provide information on the site selection process, environmental justice, and how this project's impacts relate to other projects under the new plan for the National Mall. Rating EC2.

Final EISs

EIS No. 20070546, ERP No. F–IBR–J28022–00, Red River Valley Water Supply Project, Development and Delivery of a Bulk Water Supply to meet Long-Term Water Needs of the Red River Valley, Implementation, ND and MN.

Summary: While EPA expressed concern about any project involving the inter-basin transfer of water, EPA is confident that the additional refinements that have been made to the project treatment and design and the application of mitigation measures that have been identified will further reduce the potential environmental impacts of the preferred alternative. EPA is prepared to work with Reclamation and

the State of North Dakota during the engineering phase and adaptive management process.

EIS No. 20080012, ERP No. F–NAS–A12044–00, PROGRAMMATIC—Constellation Program, Develop the Flight Systems and Earth-based Ground Infrastructure for Future Missions, International Space Station, The Moon, Mars, and Beyond, Brevard and Volusia Counties, FL; Hancock County, MS; Orlean Parish, LA; Harris County, TX; Madison County, AL; Cuyahoga and Erie Counties, OH; Hampton, VA; Santa Clara County, CA; Dona Ana and Otero Counties, NM; and Box Elder and Davis Counties, UT.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080024, ERP No. F–AFS–L61218–ID, Frank Church—River of No Return Wilderness (FC–RONRW), Noxious Weed Treatments, Updated Information to Supplement the 1999 Final EIS for FC–RONRW, Implementation, Bitterroot, Boise, Nez Perce, Payette, and Salmon-Challis National Forests, ID.

Summary: No formal comment letter was sent to the preparing agency.

Dated: February 26, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. E8–3937 Filed 2–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6696–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements Filed 02/18/2008 through 02/22/2008. Pursuant to 40 CFR 1506.9.

EIS No. 20080065, Final EIS, BLM, ID, Snake River Birds of Prey National Conservation Area, Resource Management Plan, Implementation, Ada, Canyon, Elmore, Owyhee Counties, ID, Wait Period Ends: 03/31/2008, Contact: Michael O'Donnell 208–384–3315.

EIS No. 20080066, Final EIS, BLM, ID, Fire, Fuels and Related Vegetation Management Direction Plan Amendment, Upper Snake River District (The District), Amending 12 Existing Land Use Plans, Several Counties, ID, Wait Period Ends: 03/31/2008, Contact: Terry Smith 208–478–6347.

EIS No. 20080067, Draft EIS, FHW, MI, Detroit River International Crossing Study, Propose Border Crossing System between the International Border Cities of Detroit, Michigan and Windsor, Ontario, Wayne County, MI, Comment Period Ends: 04/29/2008, Contact: David T. Williams 517–702–1820.

EIS No. 20080068, Draft EIS, NPS, SD, Minuteman Missile National Historic Site, General Management Plan, Implementation, Jackson and Pennington Counties, SD, Comment Period Ends: 04/29/2008, Contact: Mark Herberger 605–433–5552.

EIS No. 20080069, Final EIS, NPS, AZ, Saguaro National Park General Management Plan, Implementation, Rincon Mountain District and Tucson Mountain District, Pima County, AZ, Wait Period Ends: 03/31/2008, Contact: Mary McVeigh 303–969–2360.

EIS No. 20080070, Draft EIS, AFS, AZ, Warm Fire Recovery Project, Removal of Fire-Killed Trees Reforestation, Fuel Reduction and Road Reconstruction of Wildland Fire Burn Portion, Coconino County, AZ, Comment Period Ends: 04/14/2008, Contact: Lois Pfeffer 559–359–7023.

EIS No. 20080071, Draft EIS, NOA, 00, PROGRAMMATIC—Incorporation of the Revised Washington Shoreline Management Act Guidelines into the Federally Approved Washington Coastal Management Program, Amendment No. 4 Approval, Coastal Counties in WA, Comment Period Ends: 04/14/2008, Contact: Helen Farr 301–713–3155 Ext. 175.

EIS No. 20080072, Draft EIS, IBR, CO, Southern Delivery System Project, Water Supply Development, Execution of up to 40-year Contracts for Use of Fryingpan-Arkansas Project Facilities, Special Use Permit, El Paso County, CO, Comment Period Ends: 04/29/2008, Contact: Kara Lamb 970–663–3212.

EIS No. 20080073, Final EIS, FHW, IL, Prairie Parkway Study, Transportation System Improvement between I–80 and I–88, Widening IL–47 to 4 Lanes from I–80 to Caton Farm Road, Funding, U.S. Army COE Section 404, Grundy, Kendall and Kane Counties, IL , Wait Period Ends: 03/31/2008, Contact: Norman R. Stoner 217–492–4640.

Amended Notices

EIS No. 20010014, Draft EIS, AFS, AK, Withdrawn—Gravina Island Timber Sale, Implementation, Timber Harvest and Related Activities, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK, Comment Period Ends: 06/26/2001, Contact: Susan Marthaller 907–225–2148. Revision of FR Published 01/19/2001: Officially Withdrawn by the Preparing Agency.

EIS No. 20040393, Final EIS, AFS, AK, Withdrawn—Gravina Island Timber Sale, Implementation, Timber Harvest and Related Activities, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, AK, Wait Period Ends: 09/20/2004, Contact: Rob Reeck 907–228–4114. Revision of FR Published 08/20/2004: Officially Withdrawn by the Preparing Agency.

Dated: February 26, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–3917 Filed 2–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0142; FRL–8535–5]

Consumer Products Environmental Partnerships Program—Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meeting.

SUMMARY: EPA will convene a public meeting to discuss opportunities for industry-government partnerships to foster greater public awareness of the environmental attributes of household and institutional consumer products and help make consumers aware of efforts on the part of consumer product manufacturers to improve the environmental performance of their products and production facilities. The primary purpose of this initial meeting is to establish a dialog among government, industry, and public stakeholders leading to formation of a Consumer Products Environmental Partnerships Working Group. Once formed, the working group will identify and develop possible partnership approaches such as product labeling, consumer education programs, environmental information Web sites, product stewardship programs, and manufacturer recognition programs.

DATES: The meeting will be held from 1 p.m. to 5 p.m. on Monday, March 17 and from 9 a.m. to 5 p.m. on Tuesday, March 18, 2008.

ADDRESSES: The meeting will be held in Building C of the EPA campus at 109

Alexander Drive, Research Triangle Park, North Carolina.

FOR FURTHER INFORMATION CONTACT: For information concerning the Consumer Products Environmental Partnerships Program, contact Mr. Bruce Moore, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (E143–03), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5460, fax number (919) 541–3470, e-mail address: *moore.bruce@epa.gov*. If you plan to attend the meeting, please submit your name and affiliation by e-mail or by telephone to Mr. Moore no later than Thursday, March 13, 2008.

SUPPLEMENTARY INFORMATION:

I. General Information

Docket. EPA has established a docket for this program under Docket ID Number EPA–HQ–OAR–2008–0142. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

II. Background

EPA envisions that the consumer products of interest to the working group will encompass a wide array of personal care products, household cleaners, automotive aftermarket chemicals, non-agricultural pesticides, non-industrial adhesives and sealants, aerosol spray paints, architectural coatings, and other formulated products. These products are used by consumers in and around homes, offices, schools, and in a variety of other settings. These important products can enhance the quality of life of consumers, make household chores easier, and have beneficial health functions through control of household pests and pathogens in and around living spaces.

However, as these products are used, stored, and are disposed of, some or all of their ingredients evaporate and enter the air. One concern that has been raised is the effect of household and institutional consumer product use on indoor air quality. In addition to personal exposure during use, consumer products also contribute to ground-level ozone formation, have solid waste and groundwater impacts due to disposal of spent packaging, are sources of fine particulate matter through secondary aerosol formation, and in some cases can contribute to stratospheric ozone depletion and global warming. Furthermore, increased use of nanomaterials in consumer products is an emerging issue. With such potential multimedia and multipollutant impacts, consumer products are ripe for additional environmental attention.

Since the late 1980s, a substantial segment of these products (e.g., architectural coatings, aerosol coatings, and many categories of household and institutional consumer products) have been regulated intensely by EPA and several States for purposes of controlling ground-level ozone formation through limits placed on the volatile organic compound content of the products. We commend the States and the consumer products and coatings industries for their cooperative efforts to reduce ozone formation resulting from use of these products. Furthermore, some manufacturers voluntarily have improved the environmental performance of their products over the years. However, other potential environmental effects generally have not been addressed.

The EPA believes that consumer choice in the marketplace can be an effective means of bringing about change in the environmental performance of household and institutional products. Key elements of such a market-based approach include educating consumers and making information available concerning the environmental attributes of the products they use. We also believe that reliable information concerning the degree of environmental stewardship exhibited by consumer products and coatings manufacturers should play a role in consumers' purchasing decisions. For this information to be useful, manufacturers who are good environmental stewards should be recognized in a manner that is readily apparent to the consumer in the marketplace.

III. Structure of the Meeting

The EPA envisions this meeting to consist of three major phases: (1) Presentation of background information on consumer products, existing stewardship programs, constraints on environmental marketing claims, and EPA's initial thoughts on a few possible partnership approaches; (2) several concurrent breakout sessions to explore these approaches; and (3) formation of the Consumer Products Partnerships Working Group, including subgroups for specific approaches.

Dated: February 26, 2008.

Jennifer N. Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E8–3936 Filed 2–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8535–6]

Science Advisory Board Staff Office; EPA Clean Air Scientific Advisory Committee (CASAC); Notification of Public Advisory Committee Meeting (Teleconference) of the Ambient Air Monitoring & Methods (AAMM) Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Ambient Air Monitoring & Methods (AAMM) Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) to conduct a consultation concerning ambient air monitoring issues related to the National Ambient Air Quality Standards (NAAQS) for lead, including issues associated with alternative lead indicators.

DATES: The teleconference meeting will be held on Tuesday, March 25, 2008, from 1 p.m. to 5 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in number and access code; submit a written or brief oral statement (three minutes or less); or receive further information concerning this teleconference meeting, must contact Mr. Fred Butterfield, Designated Federal Officer (DFO). Mr. Butterfield may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA SAB can be found on the EPA Web site at: *http://www.epa.gov/casac* or *http://www.epa.gov/sab,* respectively.

SUPPLEMENTARY INFORMATION:

Background: The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent

scientific advisory committee. The CASAC provides advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB Staff Office established the CASAC AAMM Subcommittee in 2004 as a standing subcommittee to provide the EPA Administrator, through the CASAC, with advice and recommendations, as necessary, on topical areas related to ambient air monitoring, methods and networks. The Subcommittee complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including lead. The current review of the Lead NAAQS was initiated in early 2005. In December 2007, the CASAC Lead Review Panel met to conduct a review of the Advance Notice of Proposed Rulemaking (ANPR) on the NAAQS for Lead. The Lead Panel also reviewed the Agency's Final Lead Staff Paper and the Final Lead Risk Assessment Report. The CASAC's report to the EPA Administrator concerning this review (EPA–CASAC–08–007, dated January 22, 2008) is posted on the CASAC Web page that can be accessed at the URL address provided above.

In this report, the CASAC noted that Agency staff, in its Final Lead Staff Paper, had recommended that the Administrator consider retaining lead in total suspended particulates (Pb-TSP) as the indicator for ambient lead. While, historically, the Lead NAAQS has relied on TSP samples for quantifying ambient lead concentrations, the CASAC recommended that EPA should transition to lead in PM_{10} (Pb-PM_{10}) sampling for quantifying ambient lead concentrations. In particular, the CASAC observed that Pb-PM_{10} is a much more accurate and precisely measured indicator and represents the fraction of lead that is more relevant for human exposures. Furthermore, the CASAC noted that there is a greater availability of Pb-PM_{10} samplers than Pb-TSP samplers throughout the U.S. Additionally, the CASAC found the existing Pb-TSP network inadequate in its ability to characterize population exposures, conditions around large sources, and concentrations at typical ambient concentrations in many parts of the country. CASAC also indicated in the letter that its AAMM Subcommittee would be better-suited to provide advice on lead monitoring and network design issues. Accordingly, the purpose of this public teleconference meeting is for the Subcommittee to conduct a consultation with Agency staff on several draft EPA documents relating to the ambient air monitoring of Pb-PM_{10}, including options for the Lead NAAQS indicator, a draft Federal Reference Method (FRM) for Pb-PM_{10}, lead monitoring network design, and sampling frequency. The SAB Staff Office has developed the consultation as a mechanism to provide early input and advice to EPA on technical issues that should be considered in the development of regulations, guidelines, or technical guidance before the Agency has taken a position.

Technical Contacts: Any technical questions concerning these Lead NAAQS indicator and ambient air monitoring issues can be directed to Mr. Kevin Cavender, OAQPS, at phone: (919) 541–2364, or e-mail: *cavender.kevin@epa.gov;* or to Mr. Lewis Weinstock, OAQPS, at phone: (919) 541–3661, or e-mail: *weinstock.lewis@epa.gov.*

Availability of Meeting Materials: On or about March 3, 2008, the Agency will post the documents to be discussed during this consultation on the EPA Technology Transfer Network (TTN) Web page for the Lead NAAQS, ''Lead (Pb)—Documents from Current Review—Technical Documents,'' found at: *http://www.epa.gov/ttn/naaqs/standards/pb/s_pb_cr_td.html*. In addition, the Agency will announce the availability of these materials, to include the process for submitting public comments on these documents, by means of a separate **Federal Register** notice to be published around the first week in March. Furthermore, a copy of the draft agenda and other materials for this CASAC teleconference will be posted on the SAB Web site at: *http://yosemite.epa.gov/sab/sabproduct.nsf/WebCASAC/recentadditions* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the CASAC AAMM Subcommittee to consider on the topics included in this advisory activity and/or the group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Mr. Butterfield, DFO, in writing (preferably via e-mail), by March 18, 2008, at the contact information noted above, to be placed on the list of public speakers for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by March 21, 2008, so that the information may be made available to the Subcommittee for its consideration prior to this teleconference. Written statements should be supplied to the DFO electronically via e-mail (acceptable file formats: Adobe PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: February 25, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–3933 Filed 2–28–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1056; FRL–8350–5]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

Editorial Note: This notice did not appear in the issue of Wednesday, February 27, 2008. As a result, it is being printed in its entirety.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted or denied emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions or denials were granted during the period October 1, 2007 through December 31, 2007 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption or denial for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions discussed above. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1056. Publicly available docket materials are available either electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility 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.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

EPA has granted or denied emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of specific exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption or denial, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions and Denials

A. U. S. States and Territories

California

Environmental Protection Agency, Department of Pesticide Regulation
Specific Exemption: EPA authorized the use of thiabendazole as a seed treatment on Brussels sprout, cabbage, and cauliflower to control black leg disease (*Phoma lingam*); November 17, 2007 to November 17, 2008. Contact: (Stacey Groce).
EPA authorized the use of thiophanate-methyl on mushroom to control green mold; October 26, 2007 to October 26, 2008. Contact: (Andrea Conrath).
Crisis: On November 29, 2007, for the use of boscalid and pyraclostrobin on Belgian endive to control *Sclerotinia*. This program is expected to end on January 31, 2008. Contact: (Stacey Groce).

Colorado

Department of Agriculture
Specific Exemption: EPA authorized the use of clothianidin on beet, sugar beet, seed to control beet leafhopper (beet curly top virus); December 15, 2007 to September 30, 2008. Contact: (Stacey Groce).

Connecticut

Department of Environmental Protection
Crisis: On December 18, 2007, for the use of chlorine dioxide on a contaminated building to inactive *Bacillus anthracis* spores. This program has ended. Contact: (Princess Campbell).

Delaware

Department of Agriculture
Specific Exemption: EPA authorized the use of thiophanate-methyl on mushroom to control green mold; January 14, 2008 to January 14, 2009. Contact: (Andrea Conrath).

Florida

Department of Agriculture and Consumer Services
Specific Exemption: EPA authorized the use of fludioxonil on carambola to control *Dothiorella* fruit rot; November 30, 2007 to November 30, 2008. Contact: (Andrea Conrath).

Indiana

Office of Indiana State Chemist
Specific Exemption: EPA authorized the use of tebuconazole on corn, field, seed to control head smut; November 1, 2007 to May 31, 2008. Contact: (Andrew Ertman).

Maryland

Department of Agriculture
Specific Exemption: EPA authorized the use of thiophanate-methyl on mushroom to control green mold; Effective January 14, 2008 to January 14, 2009. Contact: (Andrea Conrath).

Minnesota

Department of Agriculture
Specific Exemption: EPA authorized the use of anthraquinone on corn, field, and sweet, seed to control sandhill crane; November 5, 2007 to July 30, 2008. Contact: (Marcel Howard).

Oregon

Department of Agriculture

Specific Exemption: EPA authorized the use of thiophanate-methyl on mushroom to control green mold; October 26, 2007 to October 26, 2008. Contact: (Andrea Conrath).
EPA authorized the use of clothianidinin on beet, sugar, seed to control beet leafhopper (beet curly top virus); December 15, 2007 to September 30, 2008. Contact: (Stacey Groce).

Pennsylvania

Department of Agriculture
Specific Exemption: EPA authorized the use of thiophanate-methyl on mushroom to control green mold; Effective January 8, 2008 to January 8, 2009. Contact: (Andrea Conrath).

Texas

Department of Agriculture
Crisis: On November 26, 2007, for the use of thiophanate-methyl on citrus to control postbloom fruit drop and stem-end rot. A specific exemption request has been submitted to EPA for this use. This program is ongoing. Contact: (Andrea Conrath).
Specific Exemption: EPA authorized the use of triflumizole on parsley; dandelion; swiss chard; collards; kale; kohlrabi; mustard greens; Chinese napa cabbage; coriander, leaves; broccoli; and turnip greens to control powdery mildew (Erysiphe spp.); November 2, 2007 to November 2, 2008. Contact: (Libby Pemberton).
EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; December 28, 2007 to May 31, 2008. Contact: (Andrew Ertman).

Washington

Department of Agriculture
Specific Exemption: EPA authorized the use of thiabendazole as a seed treatment on Brussels sprout, cabbage, and cauliflower to control blackleg disease (*phoma lingam*); November 17, 2007 to November 17, 2008. Contact: (Stacey Groce).

Wisconsin

Department of Agriculture, Trade, and Consumer Protection
Specific Exemption: EPA authorized the use of anthraquinone on corn, field, and sweet, seed to control sandhill crane; December 13, 2007 to July 30, 2008. Contact: (Marcel Howard).

Wyoming

Department of Agriculture
Specific Exemption: EPA authorized the use of clothianidin on beet, sugar, seed to control beet leafhopper (beet curly top virus); December 13, 2007 to September 30, 2008. Contact: (Stacey Groce).

B. Federal Department and Agencies

United States Department of Agriculture
Animal and Plant Health Inspector Service
Quarantine: EPA authorized the use of E-11-tetradecen-1-yl acetate on all agricultural crops and all residential areas to control the light brown apple moth; October 5, 2007 to October 1, 2010. Contact: (Andrew Ertman).
Quarantine: EPA authorized the use of *bacillus thuringiensis* on cotton to control the pink boll worm; October 31, 2007 to October 31, 2010. Contact: (Andrea Conrath).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 14, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

Editorial Note: This notice did not appear in the issue of Wednesday, February 27, 2008. As a result, it is being printed in its entirety.

[FR Doc. E8–3491 Filed 2–26–08; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer —Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. Report titles: Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers, or Dealers); Deregistration Statement for Persons Registered Pursuant to Regulation U; Statement of Purpose for an Extension of Credit Secured by Margin Stock by a Person Subject to Registration Under Regulation U; Annual Report; Statement of Purpose for an Extension of Credit by a Creditor; and Statement of Purpose for an Extension of Credit Secured by Margin Stock

Agency form numbers: FR G–1, FR G–2, FR G–3, FR G–4, FR T–4, and FR U–1

OMB control numbers: 7100–0011: FR G–1, FR G–2, and FR G–4; 7100–0018: FR G–3; 7100–0019: FR T–4; and 7100–0115: FR U–1

Frequency: FR G–1, FR G–2, FR G–3, FR T–4, and FR U–1: on occasion FR G–4: annual

Reporters: Individuals and business

Annual reporting hours: 1,366 reporting hours; 107,757 recordkeeping hours

Estimated average hours per response: FR G–1: 2.5 hours; FR G–2: 15 minutes;FR G–3: 10 minutes; FR G–4: 2.0 hours; FR T–4: 10 minutes; and FR U–1: 10 minutes

Number of respondents: FR G–1: 61; FR G–2: 36; FR G–3: 602; FR G–4: 602; FR T–4: 5,100; and FR U–1: 6,931

General description of report: These information collections are mandatory (15 U.S.C. §§ 78g). The information in the FR G–1 and FR G–4 is given confidential treatment under the Freedom of Information Act (5 U.S.C. §§ 552(b)(4) and (6)). The FR G–2 does not contain confidential information. The FR G–3, FR T–4, and FR U–1 are not submitted to the Federal Reserve and, as such, no issue of confidentiality arises.

Abstract: The Securities Exchange Act of 1934 authorizes the Federal Reserve to regulate securities credit extended by brokers and dealers, banks, and other lenders. The purpose statements, FR T–4, FR U–1, and FR G–3, are recordkeeping requirements for brokers and dealers, banks, and other lenders,

respectively, to document the purpose of their loans secured by margin stock. Margin stock is defined as (1) stocks that are registered on a national securities exchange or any over–the–counter security designated for trading in the National Market System, (2) debt securities (bonds) that are convertible into margin stock, and (3) shares of most mutual funds. Lenders other than brokers and dealers and banks must register and deregister with the Federal Reserve using the FR G–1 and FR G–2, respectively, and they must file an annual report (FR G–4) while registered. The Federal Reserve uses the data to identify lenders subject to Regulation U, to verify their compliance with the regulation, and to monitor margin credit.

Current Actions: On December 21, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 72725) requesting public comment for sixty days on the extension, without revision, of the six reports that collect information on certain extensions of credit secured by margin stock, including the amount and purpose of such credit. The comment period expired on February 19, 2008. The Federal Reserve did not receive any comment letters.

2. Report title: Annual Daylight Overdraft Capital Report for U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2225
OMB Control number: 7100–0216
Frequency: Annual
Reporters: Foreign banks with U.S. branches or agencies
Annual reporting hours: 54 hours
Estimated average hours per response: 1.0 hour
Number of respondents: 54
General description of report: This information collection is required to respond in order to obtain or retain a benefit, i.e., in order for the U.S. branch or agency of an FBO to establish and maintain a non–zero net debit cap. The information submitted by respondents is not confidential; however, respondents may request confidential treatment for portions of the report. Data may be considered confidential and exempt from disclosure under section (b)(4) of the Freedom of Information Act if it constitutes commercial or financial information and it would customarily not be released to the public by the person from whom it was obtained (5 U.S.C. § 552(b)(4)).

Abstract: This report was implemented in March 1986 as part of the procedures used to administer the Federal Reserve's Payments System Risk (PSR) policy. A key component of the PSR policy is a limit, or a net debit cap, on an institution's negative intraday balance in its Reserve Bank account. The Federal Reserve calculates an institution's net debit cap by applying the multiple associated with the net debit cap category to the institution's capital. For foreign banking organizations (FBOs), a percentage of the FBO's capital measure, known as the U.S. capital equivalency, is used to calculate the FBO's net debit cap. Currently, an FBO with U.S. branches or agencies may voluntarily file the FR 2225 to provide the Federal Reserve with its capital measure. Because an FBO that files the FR 2225 may be able to use its total capital in determining its U.S capital equivalency measure, which is then used to calculate its net debit cap, an FBO seeking to maximize its daylight overdraft capacity may find it advantageous to file the FR 2225. An FBO that does not file FR 2225 may use an alternative capital measure based on its nonrelated liabilities.

Current Actions: On December 21, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 72725) requesting public comment for sixty days on the extension, without revision, of the FR 2225. The comment period expired on February 19, 2008. The Federal Reserve did not receive any comment letters.

3. Report title: Ongoing Intermittent Survey of Households
Agency form number: FR 3016
OMB control number: 7100–0150
Frequency: On occasion
Reporters: Households and individuals
Annual reporting hours: 683 hours
Estimated average hours per response: Division of Research & Statistics, 1.58 minutes; Division of Consumer & Community Affairs, 3 minutes; Other divisions, 5 minutes; and Non–SRC surveys, 90 minutes
Number of respondents: 600
General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 15 U.S.C. 1691b). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Federal Reserve Board. However, exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.

Abstract: The Federal Reserve uses this voluntary survey to obtain household–based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. Currently, the University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and asks questions of special interest to Federal Reserve Board staff intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments.

Current Actions: On December 21, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 72725) requesting public comment for sixty days on the extension, without revision, of the FR 2226. The comment period expired on February 19, 2008. The Federal Reserve did not receive any comment letters.

Final approval under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Report of Net Debit Cap
Agency form number: FR 2226
OMB control number: 7100–0217
Frequency: Annual
Reporters: Depository institutions, Edge and agreement corporations, U.S. branches and agencies of foreign banks
Annual reporting hours: 1,623 hours
Estimated average hours per response: 1.0 hour
Number of respondents: 1,623
General description of report: This information collection is mandatory (12 U.S.C. 248(i), 248–1, and 464). The information submitted by respondents for the payments system risk reduction program may be accorded confidential treatment under the Freedom of Information Act (FOIA) (5 U.S.C. § 552 (b)(4)). In addition, information reported in connection with the second and third resolutions may be protected under Section (b)(8) of FOIA, to the extent that such information is based on the institution's CAMELS rating, and thus is related to examination reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. § 552(b)(8)).

Abstract: Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Federal Reserve's Payments System Risk (PSR) policy. The reporting panel includes all financially healthy depository institutions with access to the discount window. The Report of Net Debit Cap comprises three resolutions, which are filed by a depository institution's board of directors depending on its needs. The first resolution is used to establish a de minimis net debit cap and the second

resolution is used to establish a self–assessed net debit cap. The third resolution is used to establish simultaneously a self–assessed net debit cap and maximum daylight overdraft capacity. Copies of the model resolutions are located in Appendix B, of the PSR policy, that can be found at http://www.federalreserve.gov/paymentsystems/psr/relpol.htm.

Current actions: On December 21, 2007, the Federal Reserve published a notice in the **Federal Register** (72 FR 72725) requesting public comment for sixty days on the extension, with revision, of the FR 2226. The comment period expired on February 19, 2008. The Federal Reserve did not receive any comment letters.

Board of Governors of the Federal Reserve System, February 26, 2008.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E8–3910 Filed 2–28–08; 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 March 14, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Citizens Investors, LLC, Savannah, Georgia, with its members, Robert C. Bush, Winter Park, Florida; Garfield Langmuir–Logan, San Juan Capistrano, California; John A. Murphy, Richmond Hill, Georgia; Thomas P. Prince, Winter Park, Florida; Elsie R. Chisholm, Michael M. Dobbs, Jack Eades; Harvey J. Gilbert; Douglas A. Goldstein; Thomas J. Hussey; Michael J. Kistler; Richard G. Mopper; Patrick T. O'Connor; Jerry E. Russell; Mark V. Smith; Henry D. Stevens IV; Gerald M. Thorne; and Jeffrey R. Tucker,; all of Savannah, Georgia, to acquire voting shares of First Citizens Bankshares, and thereby indirectly acquire voting shares of First Citizens Bank, both of Glennville, Georgia.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Notice by Lawrence W. Stanosheck; James B. Stanosheck, both of Odell, Nebraska; Karen J. Nannen, Randolph, Nebraska; and Mary Ellen Watkins, Aptos, California; as a group to acquire voting shares of S. & S. Investment Company, and thereby indirectly acquire voting shares of State Bank of Odell, both in Odell, Nebraska.

Board of Governors of the Federal Reserve System, February 25, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–3867 Filed 2–28–08; 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 March 17, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Jeffrey A. Mueller, Cascade, Wisconsin; to acquire voting shares of Collins Bankcorp, Inc., and thereby indirectly acquire voting shares of Collins State Bank, both of Collins, Wisconsin.

Board of Governors of the Federal Reserve System, February 26, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–3911 Filed 2–28–08; 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 applications 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 March 24, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. First Guaranty Bancshares, Inc., to merge with First Community Holding Company, and thereby indirectly acquire voting shares of First Community Bank, all of Hammond, Louisiana.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Parkside Financial, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Parkside Financial Bank & Trust (in organization), both of Clayton, Missouri.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. First Graham Bancorp, Inc., Graham, Texas, and First Graham Delaware Corporation, Dover, Delaware; to acquire 100 percent of the voting shares of Surety Bank, Fort Worth, Texas.

D. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Porter Mountain III, LLP, to become a bank holding company by acquiring 30 percent of the voting shares of Grand Valley Corporation, both of Grand Junction, Colorado, and thereby acquire voting shares of Grand Valley National Bank, Heber City, Utah.

In connection with this application, Applicant also has applied to engage *de novo* in extending credit and servicing loans pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 25, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–3868 Filed 2–28–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 14, 2008.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. NHB Holdings, Inc., and Proficio Morgage Ventures, LLC, both of Jacksonville, Florida; to engage in a joint venture with Capital Relocation Mortgage, Sterling, Virginia, and thereby engage *de novo* in mortgage banking activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 25, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–3869 Filed 2–28–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10123 and 10124, CMS–216–94 and CMS–10114]

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 a currently approved collection; *Title of Information Collection:* Notice of Provider Non-Coverage (CMS–10123) and Detailed Explanation of Non-Coverage (CMS–10124); *Use:* The Notice of Medicare Provider Non-Coverage (CMS–10123) is used to inform fee-for-service Medicare beneficiaries of the determination that their provider services will end, and of their right to an expedited review of that determination. The Detailed Explanation of Non-Coverage (CMS–10124) is used to provide beneficiaries who request an expedited determination with detailed information of why the services should end. The revised Notice of Provider Non-Coverage and Detailed Explanation of Provider Non-Coverage will no longer require use of the beneficiary's Medicare number as a patient identifier. Instead, when applicable, providers may use a number that helps to link the notice with a related claim. *Form Number:* CMS–10123 and 10124 (OMB #0938–0953); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Individuals or households; *Number of Respondents:* 3,115,637; *Total Annual Responses:* 3,115,637; *Total Annual Hours:* 522,138.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization/Histocompatibility Laboratory Statement of Reimbursable Costs, manual instructions and supporting regulations contained in 42 CFR 413.20 and 413.24; *Use:* This form is required by the statute and regulation for participation in the Medicare program. The information is used to determine payment for Medicare. Organ Procurement Organizations and Histocompatibility Laboratories are the users. *Form Number:* CMS–216–94 (OMB #0938–0102); *Frequency:* Yearly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 108; *Total Annual Responses:* 108; *Total Annual Hours:* 4,860.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* National Provider Identifier (NPI) Application and Update Form and Supporting Regulations in 45 CFR 142.408, 45 CFR 162.406, 45 CFR 162.408; *Use:* The National Provider Identifier (NPI)

Application and Update Form is used by health care providers to apply for NPIs and furnish updates to the information they supplied on their initial applications. The form is also used to deactivate their NPIs if necessary. The NPI Application/Update form has been revised to further assist in uniquely identifying health care providers and provide additional guidance on how to accurately complete the form. The form captures additional data elements that will assist with unique identification. It also includes more detailed instructions. *Form Number:* CMS–10114 (OMB #0938–0931); *Frequency:* Reporting—On occasion, one-time; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal government; *Number of Respondents:* 325,608; *Total Annual Responses:* 325,608; *Total Annual Hours:* 108,560.

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.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *April 29, 2008:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: *February 21, 2008.*

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–3839 Filed 2–28–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3196–N]

Medicare Program; Town Hall Meeting of the Medicare Evidence Development and Coverage Advisory Committee—April 30, 2008

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

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MedCAC) (''Committee''). We are soliciting comments from the scientific community and the public on prioritizing research topics of importance to the Medicare population. This meeting is a follow up to the CMS Evidentiary Priorities MedCAC meeting, which was held on October 22, 2007 to establish a list of evidentiary priorities for research to improve the health of Medicare beneficiaries.

The Committee generally provides advice and recommendations about whether scientific evidence is adequate to determine whether certain medical items and services are reasonable and necessary under the Medicare statute.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting Date:* The public meeting will be held on Wednesday, April 30, 2008 from 7:30 a.m. until 4:30 p.m., e.s.t.

Deadline for Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by April 2, 2008, 5 p.m., e.s.t. Once submitted, comments are final. The meeting will not include PowerPoint presentations.

Deadline for Meeting Registration: Individuals may register by phone or e-mail by contacting the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by close of business on Monday April 21, 2008.

Deadline for Submitting Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than April 23, 2008.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare and Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244.

Submission of Presentations and Comments: Written comments and those that will be presented verbally at the meeting must be submitted by e-mail to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MedCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis via phone (410–786–0309) or e-mail at *Maria.Ellis@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (MCAC), now known as the MedCAC, which provides advice and recommendations to CMS about clinical issues.

The purpose of the MedCAC meeting is to discuss the priorities for research topics that are important for the Medicare program and the Medicare population and to make recommendations to CMS. This public discussion may also provide useful information for researchers in the scientific community who are interested in developing research projects concerning Medicare beneficiaries. This meeting is a follow up to the CMS Evidentiary Priorities MedCAC meeting which was held on October 22, 2007. The purpose of the October 22, 2007 meeting was to establish a list of evidentiary priorities for research to improve the health of Medicare beneficiaries. Details on the October 22, 2007 meeting and the CMS Evidentiary Priorities can be found at *http://www.cms.hhs.gov/mcd/viewmcac.asp?where=index&mid=41.*

The Committee generally provides advice and recommendations about whether scientific evidence is adequate to determine whether certain medical items and services are reasonable and necessary and thus eligible for coverage under the Medicare statute.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 30 minutes. The Committee may limit the number and

duration of oral presentations to the time available. Your comments should consider the list of topics that we have proposed to the Committee and should focus on issues specific to those topics. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcac*. We require that you declare at the meeting whether you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

The Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state issued driver's license), address, organization, telephone, fax number(s), and e-mail address.

You will receive a registration confirmation with instructions for your arrival at the CMS complex. You will be notified if the seating capacity has been reached.

This meeting is located on Federal property; therefore, for security reasons, any individuals wishing to attend this meeting must register by the date as specified in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend that you arrive reasonably early to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 30 to 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

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

Dated: February 14, 2008.

Barry M. Straube,

Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare and Medicaid Services.

[FR Doc. E8–3829 Filed 2–28–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No FDA–2008–P–0125] (formerly Docket No. 2007P–0172)

Determination That MINOCIN (Minocycline Hydrochloride) Capsules Equivalent to 75 Milligrams Base Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that MINOCIN (minocycline hydrochloride) Capsules equivalent to (EQ) 75 milligrams (mg) base was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for minocycline hydrochloride capsules if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Carol E. Drew, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6306, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On May 1, 2007, Kendle International, on behalf of Aurobindo Pharmaceuticals, Ltd., submitted a citizen petition (Docket No. 2007P–0172/CP1) to FDA under 21 CFR 10.30. The petition requests that the agency determine whether MINOCIN

(minocycline hydrochloride) Capsules EQ 75 mg base (NDA 050–649), manufactured by Triax Pharmaceuticals, Ltd. (Triax), was withdrawn from sale for reasons of safety or effectiveness. MINOCIN is a tetracycline-class antibiotic medicine used to treat certain infections caused by bacteria. MINOCIN Capsules EQ 75 mg base was approved on February 12, 2001. Our records show that the 75 mg strength of this product was marketed for a short period of time in 2001. MINOCIN Capsules EQ 75 mg base were discontinued in September 2001 and the drug product was moved from the prescription drug product list to the ''Discontinued Drug Product List'' section of the Orange Book.

FDA has reviewed its records and, under § 314.161, has determined that MINOCIN Capsules EQ 75 mg base was not withdrawn from sale for reasons of safety or effectiveness. The petitioner identified no data or other information suggesting that MINOCIN Capsules EQ 75 mg base was withdrawn for reasons of safety or effectiveness. FDA has independently evaluated relevant literature and data for possible postmarketing adverse events and has found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list MINOCIN (minocycline hydrochloride) Capsules EQ 75 mg base in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to minocycline hydrochloride capsules EQ 75 mg base may be approved by the agency if all other legal and regulatory requirements for the approval of ANDAs are met. If FDA determines that labeling for this drug product should be revised to meet current standards, the agency will advise ANDA applicants to submit such labeling.

Dated: February 21, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–3879 Filed 2–28–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Cancer Care for Uninsured Individuals: A Feasibility Study (NCI)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 21, 2007 (Vol. 72, No. 245, p. 72741 and allowed 60-days for public comment. One public comment was received that questioned why the study was not funded by University of Alabama (UAB) funds. A response was made on February 8, 2008, that indicated that UAB was funding this study. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Cancer Care For Uninsured Individuals: A Feasibility Study. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this information collection is to assess the feasibility of obtaining health insurance information for participants of the Prostate, Lung, Colon and Ovarian (PLCO) Cancer Screening Trial participants from health care providers and self reports. The ultimate objective is to compare the health care utilization of insured and uninsured PLCO participants. The PLCO data provides a unique opportunity to study health care seeking behavior after an abnormal cancer screening test and the effect of lack of health insurance. Participants who had positive cancer screening tests were referred to their doctors for follow-up care. No additional care was provided by the trial. The study collected detailed information on tests received for diagnosis, clinical presentation of disease, and cancer treatment. Since the PLCO original data collection had not recorded the health insurance of participants at the time of their screening, it is necessary to collect it retrospectively. This feasibility study will request information from 50 physicians and 150 participants. The aims are to determine the:

(1) Total number of physicians to be contacted to obtain insurance information on all PLCO participants who had a positive cancer screening test;

(2) Percentage of physicians willing and able to provide insurance information;

(3) Percentage of participants with and without insurance;

(4) Number of participants for whom insurance status can be only determined by self report;

(5) Percentage of PLCO participants who accept to respond to the survey;

(6) Percentage of individuals who are willing to provide information on insurance status; and,

(7) Potential proportion of PLCO participants without health insurance.

These results will be used to design a study to examine the health care behavior of insured and uninsured PLCO participants. This is relevant to understand the results of the PLCO Cancer Screening Trial and other screening trials currently being conducted in the U.S. The success of these trials is conditional on participants' access to care following a recommendation for follow-up. Uninsured individuals may be more likely to join these trials than insured ones in order to get free preventive care. They may also be more likely to not seek, or delay seeking, care after an abnormal screening test even though they are encouraged to get care and they may be highly motivated to receive the best care possible. It is relevant for other decision makers to understand whether uninsured persons are receiving appropriate care after abnormal screening results. The efforts to control cancer disease and the loss of life associated with it are concentrated on population wide screening. These endeavors may be compromised if a significant proportion of the population does not get appropriate follow-up after screening or does not get the care known to be effective for their disease. *Frequency of Response:* One time. *Affected Public:* Individuals and households; businesses or other for-profit. *Type of Respondents:* Individuals older than 55 who participated in the PLCO Screening trial and physicians who provided care for them. The annual reporting burden is shown in the following table.

Type of respondents	Number of respondents	Frequency of response	Average burden hours per response	Annual hour burden
PLCO participants	150	1	5 minutes (0.083)	12.5
Physicians office staff	50	1	20 minutes (0.333)	16.7
Totals	200			29.2

The annualized cost to respondents is estimated at: $487.50. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Maria Pisu, Division of Preventive Medicine, University of Alabama at Birmingham, MT 628, 1530 3rd Avenue South, Birmingham, AL 35294–4410, or call non-toll-free number (205) 975–7366 or e-mail your request, including your address to: *mpisu@uab.edu*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: February 20, 2008.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison Office, National Institutes of Health.

[FR Doc. E8–3836 Filed 2–28–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Pharmacophore for Isatin-β-Thiosemicarbazone Compounds With MDR1-Inverse Activity

Description of Technology: One of the major hindrances to successful cancer chemotherapy is multi-drug resistance (MDR), which is frequently caused by the increased expression or activity of ABC transporter proteins. Research has generally been directed to overcoming MDR during cancer therapy by inhibiting the activity of ABC transporters. However, compounds that inhibit ABC transporter activity often elicit strong and undesirable side-effects, restricting their usefulness in therapy.

In an alternative approach to reducing the debilitating effects of MDR in cancer therapy, scientists at the National Cancer Institute identified a family of compounds whose antiproliferative effects were actually enhanced in cells with MDR. These compounds included NSC 73306, a specific compound that increased the chemosensitivity of cells that overexpress ABC transporters without inhibiting ABC transporter activity. This invention concerns new analogs of NSC 73306 with improved selectivity and solubility, and the use of the analogs as therapeutics.

Applications:

Treatment of cancers associated with multi-drug resistance, either alone or in combination with other therapeutics.

Development of a pharmacophore for improved effectiveness in treating cancers associated with multi-drug resistance.

Advantages:

The agents capitalize on one of the most common drawbacks to cancer therapies (MDR) by using it as an advantage to treating cancer.

Increased specificity allows these analogs to be tailored to treating cancers associated with the overexpression and hyperactivity of particular ABC transporters.

Increased solubility allows greater access of the agent to tumor cells, increasing therapeutic effectiveness of the agents.

Benefits: Cancer is the second leading cause of death in United States and it is estimated that there will be approximately 600,000 deaths caused by cancer in 2007. Improving the quality of life and duration of life of cancer patients will depend on chemotherapies with increased effectiveness and reduced toxicity, thus this technology can contribute significantly to a social cause. Furthermore, small molecule cancer therapy technologies have a potential market of more than $2 billion.

Inventors: Matthew D. Hall et al. (NCI).

U.S. Patent Status: Provisional U.S. Application (HHS Reference No. E–017–2008/0–US–01).

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute's Laboratory of Cell Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize for the clinic, compounds that demonstrate MDR1-inverse activity. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

An Improved Non Viral System for Tumor Specific Suicide Gene Therapy

Description of Technology: Numerous tumor specific promoters have been identified and developed for targeted gene therapy. Survivin promoter activity is upregulated in 75% of tumors, however the activity is specific but low, resulting in sub-optimal suicide gene expression. Combination of survivin promoter with Bax, a proapoptotic gene, previously used in such therapy has demonstrated low efficacy.

Scientists at NCI have made a plasmid construct consisting of survivin promoter driven mutant form of bax that is constitutively active. This construct is more potent than the wild type bax, improving its efficacy several-fold, while, retaining specificity for tumors, as determined by in vitro and in vivo studies.

This new technology does not use CMV or SV–40 promoters, alleviating the need for modifications for commercialization.

Advantages:

Can be used with cationic liposomes or other DNA delivery systems.

Can be incorporated into adenoviral and lentiviral vectors.

Excludes viral promoters.

Can be modified easily to use other promoters/suicide genes.

Applications:

Cancer therapeutics

Targeted Gene therapy

Market: In patients with advanced solid tumors or recurrences despite surgery, chemotherapy can provide quality survival. However, responses are usually partial, often disappointingly brief and unpredictable and coupled with side effects. These limitations of traditional cytotoxic chemotherapy make it necessary to explore other therapies such as targeted gene therapy. Viruses, while the carrier of choice in most gene therapy studies, present a variety of potential problems to the patient—toxicity, immune and inflammatory responses, and gene control and targeting issues. In addition, there is a fear that the viral vector may recover its ability to cause disease in the patient. Our new technology addresses some of the above issues making it a suitable agent for cancer and gene therapy.

Development Status: Early.

Inventors: Himanshu Garg and Robert P. Blumenthal (NCI).

Patent Status: HHS Reference No. E–245–2007/0—Research Tool. Patent protection is not being sought for this technology.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: John Stansberry, PhD; 301–435–5236; *stansbej@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute Center for Cancer Research Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize tumor specific suicide gene therapy using survivin promoter driven mutant bax. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Eeyarestatins: Novel Deubiquitination Inhibitors for the Treatment of Drug-Resistant Cancers

Description of Technology: The ubiquitin-proteasome system has recently been recognized to play a central role in tumor biology. Bortezomib, an inhibitor of the chymotrypsin-like activity of the proteasome, has clinical activity in a variety of hematologic malignancies and is FDA approved for use in Multiple Myeloma and Mantle Cell Lymphoma.

The present invention for the first time describes that Eeyarestatins, a new class of small molecules, are potential anti-cancer agents. The compounds inhibit the deubiquitination of proteins by targeting the deubiquitination enzymes in the protein degradation pathway. More specifically, the inventors have demonstrated that the Eeyarestatins successfully kill different leukemia and lymphoma cell lines as well as leukemia cells isolated from patients with chronic lymphocytic leukemia by inducing the expression of Noxa, a pro-apoptotic member of the Bcl-2 protein family. Additionally, Eeyarestatins are active against cells that are resistant to Bortezomib and thus can be effective against drug-resistant tumors.

Applications:

Eeyarestatins can be developed for the treatment of deubiquitination related disorders such as cancers and proliferative disorders.

Eeyarestatins can potentially have broader use against HIV and immune related disorders considering the role of deubiquitination in budding of retroviruses and immune regulation.

Advantages:

Eeyarestatins are active against cells that are resistant to Bortezomib.

In vitro data shows activity of Eeyarestatins against primary cells from patients with chronic lymphocytic leukemia. Clinical trials show that Bortezomib is inactive against patients suffering from chronic lymphocytic leukemia.

Market: The current cancer chemotherapeutic market is valued at $42 billion and expected to grow. Additionally, this compound has potential use in HIV and immune related disorders.

Development Status: In vitro studies are completed and *in vivo* animal model studies are planned.

Inventors: Adrian Wiestner (NHLBI), Yihong Ye (NIDDK), Qiuyan Wang (NIDDK), Helena Mora-Jensen (NHLBI)

Publication: Q Wang, L Li, Y Ye. Inhibition of p97-dependent protein degradation by Eeyarestatin I. J Biol Chem. 2008 Jan 16; Epub ahead of print, doi 10.1074/jbc.M708347200.

Patent Status: U.S. Provisional Application No. 60/961,202 filed 17 Jul 2007 (HHS Reference No. E–208–2007/0–US–01)

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Surekha Vathyam; 301–435–4076; *vathyams@mail.nih.gov*.

Collaborative Research Opportunity: The National Institutes of Health laboratories of Dr. Adrian Wiestner (NHLBI) and Dr. Yihong Ye (NIDDK) are seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Eeyarestatins. Please contact Dr. Wiestner (301–594–6855, *wiestnera@mail.nih.gov*) or Dr. Ye (301–594–0845, *yihongy@mail.nih.gov*) for more information.

Synergistic Effect of TGF-Beta Blockade and Immunogenic Agents on Tumors

Description of Technology: Overcoming immune suppression in cancer patients is a major challenge for the success of cancer immunotherapy. TGF-β and its receptors are expressed in essentially all tissues, and they have been found to be important in many cellular processes including cell growth inhibition. The inhibition of TGF-β

signaling has been shown to have an inhibitory effect on tumor growth. However, TGF-β also has immunosuppressive properties.

Cancer vaccines are one of many therapies available for treatment and prevention. In particular, vaccines that elicit immune responses have been used to treat or control tumor growth that has evaded immunosurveillance. However, these vaccines have demonstrated limited success.

Available for licensing is a method for synergistically affecting tumor growth involving the administration of an agent that blocks the TGF-β signaling pathway, in combination with an immunogenic agent. The agent that blocks the TGF-β signaling pathway may inhibit the immunosuppressive effects of TGF-β, while the immunogenic agent is believed to enhance an immune response. Surprisingly, the combination of such elements produces a synergistic effect. The administration of the 1D11.16 anti-TGF-β antibody in combination with the human papilloma virus E7(49–57) peptide enhances tumor regression in an animal model. The administration of the 1D11.16 anti-TGF-β antibody in combination with irradiated CT26 cells enhances tumor regression in another mouse model. The investigators found that administering the combination of agents is more effective than the sum of their individual effects.

Applications: A method of cancer combination therapy based on immunotherapeutics.

Development Status: The invention is in the clinical stages of development.

Inventors: Masaki Terabe (NCI) et al.

Publications:

1. PCT patent publication WO 2006/089251, August 24, 2006.

2. M Terabe et al. Transforming growth factor-beta production and myeloid cells are an effector mechanism through which CD1d-restricted T cells block cytotoxic T lymphocyte-mediated tumor immunosurveillance: abrogation prevents tumor recurrence. J Exp Med. 2003 Dec 1;198(11):1741–1752.

Patent Status: U.S. Provisional Application No. 60/654,329 filed 17 Feb 2005 (HHS Reference No. E–019–2005/0–US–01); PCT Application No. PCT/US2006/005888 filed 16 Feb 2006 (HHS Reference No. E–019–2005/0–PCT–02); U.S. Patent Application No. 11/816,410 filed 15 Aug 2007 (HHS Reference No. E–019–2005/0–US–06)

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Biologically Active Macrolides, Compositions and Uses Thereof

Description of Technology: The current invention embodies the identification of a novel class of potent vacuolar-type (H+)-ATPase-inhibitory compounds. Vacuolar-type (H+)-ATPases are present in many tissues and cells of the body and are involved in the maintenance of various physiological functions. The modification of these functions, via inhibition of vacuolar-type (H+)-ATPases, may represent an effective means of treating various disease states, including Alzheimer's disease, glaucoma, and osteoporosis. In addition, these inhibitors may also be of particular value for use against cancer, as vacuolar-type (H+)-ATPases have been implicated in processes relating to cellular proliferation, angiogenesis, tumor cell invasiveness, metastasis, and drug resistance.

Inventors: Michael R. Boyd (NCI), Kirk R. Gustafson (NCI), et al.

Patent Status: U.S. Patent No. 7,144,918 issued 05 Dec 2006 (HHS Reference No. E–203–2000/0–US–04); U.S. Patent Application No. 11/435,189 filed 16 May 2006 (HHS Reference No. E–203–2000/08–US–08)

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Adaku Nwachukwu, J.D.; 301–435–5560; *madua@mail.nih.gov*.

Human p53 Mutations and a Genetic System in Yeast for Functional Identification of Human p53 Mutations

Description of Technology: The tumor suppressor gene p53, a key regulator of cellular mechanisms that maintain genome integrity, is the most commonly inactivated gene target associated with neoplastic transformation. p53 is mutated in about 50% of all human tumors and more than 80% of these mutations are missense, leading to single amino acid changes. This invention relates to human p53 mutants and identification methods using screening assays in the yeast *Saccharomyces cerevisiae* to functionally categorize expressed p53 mutant proteins at varying levels of expression towards several human target response sequences. Additionally, the invention relates to methods of detecting or generating novel human p53 mutations with properties that can include toxicity in yeast and growth suppression in human cells, enhanced or reduced transactivation relative to wildtype p53, altered promoter selectivity, and reactivation by mutation or chemical modification of common tumor mutations for the transactivation function of major p53 downstream genes. In particular, the inventors have discovered a V122A p53 mutation exhibits strong cell proliferation inhibition. This feature suggests that p53 alleles such as V122A might be valuable both for functional studies of p53-regulated cellular responses and possibly for p53 based cancer gene therapy.

Applications:

Cancer therapeutics.

Model to screen for small molecules or peptides that can modify p53 functions.

Pharmaceutical screen for p53 drug modifiers.

Market:

An estimated 1,444,920 new cancer diagnoses in the U.S. in 2007.

Cancer drug market is estimated to be $50 billion a year in 2010.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Michael A. Resnick and Alberto Inga (NIEHS)

Publications:

1. A Jegga, A Inga, D Menendez, BJ Aronow, MA Resnick. Functional evolution of the p53 regulatory network through its target response elements. Proc Natl Acad Sci. USA. 2008 Jan 22;105(3):944–949.

2. MM Horvath, X Wang, MA Resnick, DA Bell. Divergent evolution of human p53 binding sites: cell cycle versus apoptosis. PLoS Genet. 2007 Jul;3(7):1284–1295.

3. D Menendez, A Inga, J Snipe,O Krysiak, G Schönfelder, MA Resnick. A single-nucleotide polymorphism in a half-binding site creates p53 and estrogen receptor control of vascular endothelial growth factor receptor 1. Mol Cell Biol. 2007 Apr;27(7):2590–2600.

4. P Monti, Y Ciribilli, J Jordan, P Menichini, DM Umbach, MA Resnick, L Luzzato, A Inga, G Fronza. Transcriptional functionality of germ line p53 mutants influences cancer phenotype. Clin Can Res. 2006 Jul 1;13(13):3789–3795.

5. D Menendez, A Inga, J Jordan, MA Resnick. Changing the p53 master regulatory network: *ELEMENTary*, my dear Mr. Watson. Oncogene. 2007 Apr 2;26(15):2191–2201.

6. D Menendez, A Inga, J Jordan, MA Resnick. The biological impact of the human master regulator p53 can be altered by mutations that change the spectrum and expression of its target genes. Mol Cell Biol. 2006 Mar;26(6):2297–2308.

7. DJ Tomso, A Inga, D Menendez, G Pittman, M Campbell, D Bell, MA

Resnick. Functionally distinct polymorphic sequences in the human genome that are targets for p53 transactivation. Proc Natl Acad Sci USA. 2005 May 3;102(18):6431–6436.

8. MA Resnick and A Inga. Functional mutations in the sequence-specific transcription factor p53 and implications for master genes of diversity. Proc Nat Acad Sci USA. 2003 Aug 19;100(17):9934–9939.

9. A Inga, F Storici, TA Darden, MA Resnick. Differential transactivation by the p53 transcription factor is highly dependent on p53 level and promoter target sequence. Mol Cell Biol. 2002 Dec;22(24):8612–8625, 2002.

Patent Status:

U.S. Patent No. 7,256,260 issued 14 Aug 2007 (HHS Reference No. E–183–1999/0–US–07)

U.S. Patent Application No. 11/893,037 filed 14 Aug 2007 (HHS Reference No. E–183–1999/0–US–09)

European Patent Application No. 0094897.0 filed 28 July 2007, recently allowed (HHS Reference No. E–183–1999/0–EP–05)

Australian Patent No. 784293 issued 14 Aug 2007 (HHS Reference No. E–183–1999/0–AU–03)

Australian Patent Application No. 2006202361 filed 2 Jun 2006 (HHS Reference No. E–183–1999/0–AU–08)

Canadian Patent Application No. 2380631 filed 28 July 2000 (HHS Reference No. E–183–1999/0–CA–04)

Japanese Patent Application No. 2001–514117 filed 28 July 2000 (HHS Reference No. E–183–1999/0–JP–03)

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Dated: February 21, 2008.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–3837 Filed 2–28–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.

Date: March 17, 2008.

Time: 8:30 a.m. to 4 p.m.

Agenda: Provide advice to the Office of Research on Women's Health (ORWH) on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes; to provide recommendations regarding ORWH activities; to meet the mandates of the office; and for discussion of scientific issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.od.nih.gov/orwh/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 21, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–888 Filed 2–28–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data Toolkit Protocol for the Crisis Counseling Assistance and Training Program (CCP) (OMB No. 0930–0270)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS) will create a toolkit to be used for the purposes of collecting data on the Crisis Counseling Assistance and Training Program (CCP). The CCP provides supplemental funding to states and territories for individual and community crisis intervention services during a federal declared disaster in accordance with section 416, Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended).

The CCP has provided disaster mental health services to millions of disaster survivors since its inception and, as a result of 30 years of accumulated expertise, it has become an important model for Federal response to a variety of catastrophic events. State CCPs, such as Project HOPE (after Hurricane Floyd in North Carolina), Project Heartland (in Oklahoma City after the Murrah Federal Building bombing), Project Liberty (in New York after 9/11), and Project Outreach for Recovery (after the Rhode Island nightclub fire), gulf coast States affected by the 2005 hurricanes, and recent 2007 southern California wildfires have primarily addressed the short-term mental and behavioral health needs of communities through (a) outreach and public education, (b) individual and group counseling, and (c) referral. Disaster victims are

normally resilient people responding to abnormally stressful events, thus crisis counseling services are directed at normalizing individuals' experience and distress. Outreach and public education serve primarily to normalize reactions and to engage people who might need further care. Crisis counseling is a strengths-based approach that assists survivors to cope with current stress and symptoms in order to return to predisaster functioning. Crisis counseling relies largely on ''active listening,'' and crisis counselors also provide psycho-education (especially about the nature of responses to trauma) and help clients build coping skills. Crisis counseling may be a one time event or typically continues no more than a few times on several different occasions. Since crisis counseling is time-limited, referral is the third important function of CCPs. Counselors are expected to refer clients to formal treatment if the person has developed more serious psychiatric, substance abuse, or other severe behavioral health problems.

Data about services delivered and users of services will be collected throughout the program period. The data will be collected via the use of a toolkit that relies on standardized forms. At the program level, the data will be entered quickly and easily into a cumulative database to yield summary tables for progress reporting, such as quarterly and final, for the program. The data will be collected in a consistent way from all programs, so that data can be uploaded into an ongoing national database that likewise provides CMHS with a way of producing summary reports of services provided across all programs funded.

The components of the data tool kit are listed and described below:

- Encounter logs. These forms document all services provided. Completion of these logs by the crisis counselors is required during both the CCP Immediate Services Program (first 60 days after the disaster declaration) and the Regular Services Program (up to 9 months after Immediate Services Program). There are three types of encounter logs: (1) Individual Crisis Counseling Services Encounter Log; (2) Group Encounter Log; and (3) Weekly Tally Sheet.

○ *Individual Crisis Counseling Services Encounter Log.* Crisis counseling is defined as an interaction that lasts at least 15 minutes and involves participant disclosure. This form is completed by the Crisis Counselor for each service recipient, defined as the person or persons who actively participated in the session (e.g., by verbally participating), not someone who is merely present. For families, complete separate forms for all family members who are actively engaged in the visit. Information collected includes demographics, service characteristics, risk factors, event reactions, and referral data.

○ *Group Encounter Log.* This form also completed by crisis counselors is used to identify either a group crisis counseling encounter or a group public education encounter. A check at the top identifies the class of activities (i.e., counseling where participants do most of the talking or education where a formally presentation is conducted). Information collected includes services characteristics, group identity, and activity topics.

○ *Weekly Tally Sheet.* Similar to the Individual and Group Encounter Logs, this form is completed by crisis counselors or other appropriate program staff and documents brief educational and supportive encounters not captured on either the Individual or Group Encounter Logs. Information collected includes service characteristics, daily tallies and weekly totals for brief educational or supportive contacts such as mailings, telephone calls, email contacts and material distribution with no or minimal in-person interaction.

The following three tools of the Data Toolkit: (1) Assessment and Referral, (2) Participant Feedback, and (3) CCP Service Provider Feedback are typically introduced when the Regular Services Program begins. These tools are not required to be completed; they are strongly encouraged, but optional.

- *Assessment and Referral Tool.* This tool provides descriptive information about intense users of services, defined as all individuals receiving a third individual crisis counseling visit. This tool will be completed by the crisis counselor.
- *Participant Feedback.* These surveys are completed by and collected from a sample of service recipients, not every recipient. A time sampling approach (e.g., soliciting participation from all counseling encounters one week per quarter) will be used. Information collected includes satisfaction with services, perceived improvements in self-functioning, types of exposure, and event reactions.
- CCP Service Provider Feedback. These surveys are completed by and collected from the CCP service providers anonymously at six months and one year postevent. The survey will be coded on several program-level as well as worker-level variables. However, the program itself will be identified and shared with program management only if the number of individual workers was greater than 20. Estimates of Annualized Hour Burden

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
Individual Crisis Counseling Services Encounter Log Form	[1] 200	40	8,000	.03	240
Group Encounter Log Form	94	50	4,700	.03	141
Weekly Tally Sheet	[1] 200	[2] 33	6,600	.08	528
Assessment & Referral Tool	[1] 200	[3] 12	2,400	.08	192
Participant Feedback	1,000	1	1,000	.06	60
CCP Service Provider Feedback	300	1	300	.08	24
Total			23,000		1,185

[1] 200 is based on typical average of 10 crisis counselors per grant with an approximate average of 20 grants per year.
[2] Average of 33 weeks for each grant that includes both Immediate Services and Regular Services Programs.
[3] On average 30% of crisis of encounters may result in use of this optional tool.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: February 21, 2008.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E8–3903 Filed 2–28–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; this is an extension of a currently approved collection, OMB No. 1660–0104.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning Severe Repetitive Loss Program (SRL) Appeals process as part of the administration of the SRL program.

SUPPLEMENTARY INFORMATION: To implement the Flood Insurance Act of 1968, 42 U.S.C. 4102a, as amended, FEMA has published an interim rule at 44 CFR 79.7(d) in the **Federal Register** on October 31, 2007 that outlines an appeals process by which any owner of a severe repetitive loss property may appeal the decision of FEMA to increase the chargeable insurance premium rate on property. The legislation that created the SRL program provides that any owner of a severe repetitive loss property who refuses an offer of mitigation may appeal the decision of FEMA to increase the chargeable insurance premium rate on that property. The process requires the owner to submit a written appeal, including any supporting documentation for their appeal to FEMA within 90 days of the notice of the insurance rate increase. This extension of a currently approved collection of information is necessary to ensure that the property owner is given the opportunity to provide additional documentation that supports one of the six allowable bases for appeal, outlined in the authorizing legislation, and implemented at 44 CFR 79.7(d).

Collection of Information

Title: Severe Repetitive Loss (SRL) Appeals Process.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0104.

Form Numbers: None.

Abstract: The SRL program provides property owners with the ability to appeal an increase in their flood insurance premium rate if they refuse an offer of mitigation under this program. The property owner must submit information to FEMA to support their appeal.

Affected Public: Federal Government, and individuals or households.

Estimated Total Annual Burden Hours: 100.

ANNUAL BURDEN HOURS

Project/activity	Number of respondents (A)	Frequency of responses (B)	Number of responses (C)	Hours per burden response (A×B)	Total annual burden hours (A×B×C)
Appeal written request and supporting documentation	10	1	10	10	100
Total	10	.....	10	10	100

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before April 29, 2008.

ADDRESSES: Interested persons should submit written comments to Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Cecelia Rosenberg, Branch Chief, Mitigation Directorate, (202) 646–3321 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or *e-mail address: FEMA-Information-Collections@dhs.gov.*

Dated: February 19, 2008.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–3904 Filed 2–28–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Extension of a currently approved collection 1660–0025, Standard Forms: SF–LLL, SF–424, SF–270, FEMA Forms: 20–10, 20–15, 20–16A,B,C, 20–17, 20–18, 20–19, 20–20, and 76–10A.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing

information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the forms used to collect financial, programmatic and administrative information from States and local governments pertaining to grant and cooperative agreement.

SUPPLEMENTARY INFORMATION: This information is provided in accordance with the requirements in 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government (subpart B 13.10, and subpart C 13.32, 13.33, 13.40, 13.41, and subpart D 13.50). This is FEMA implementation of the Common Rule for grants.

Collection of Information

Title: FEMA Grant Administration Forms.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0025.

Form Numbers: SF–424, Application for Federal Assistance, FEMA Form 20–20, Budget Information, FEMA Form 20–15, Budget Information—Construction, FEMA Form 20–16,A,B,C, Summary Sheet for Assurances and Certifications, SF LLL, Disclosure of Lobbying Activities, FEMA Form 76–10A, Obligating Document for Award/Amendment, FEMA Form 20–10, Financial Status Report and Performance Reports, FEMA Form 20–17, Outlay Report and Request for Reimbursement for Construction Program, FEMA Form 20–18, Report of Government Property, FEMA Form 20–19, Reconciliation of Grants and Cooperative Agreements, and SF 270 Request for Advance or Reimbursement.

Abstract: This collection of information focuses on the standardization and consistent use of standard and FEMA forms associated with grantees requests for disaster and non-disaster Federal assistance, submission of financial and administrative reporting and record keeping. The use of the forms will minimize burden on the respondent and enable FEMA to continue to improve in its grants administration practices. The forms are used to administer the following FEMA grant programs.

National Urban Search and Rescue (US&R) Response System—To develop an immediately deployable, national response capability to locate and extricate, and medically stabilize victims of structural collapse during a disaster, while simultaneously enhancing the US&R response capabilities of State and local governments.

Community Assistance Program-State Support Services Element (CAP–SSSE)—To ensure that communities participating in the National Flood Insurance Program (NFIP) are achieving flood loss reduction measures consistent with program direction. The CAP–SSSE is intended to identify, prevent and resolve floodplain management issues in participating communities before they develop into problems requiring enforcement action.

Chemical Stockpile Emergency Preparedness Program (CSEPP)—To enhance emergency preparedness capabilities of the States and local communities at each of the eight chemical agent stockpile storage facilities. The purpose of the program is to assist States and local communities in efforts to improve their capacity to plan for and respond to accidents associated with the storage and ultimate disposal of chemical warfare materials.

National Dam Safety Program (NDSP)—To encourage the establishment and maintenance of effective State programs intended to ensure dam safety, to protect human life and property, and to improve State dam safety programs.

Interoperable Communications Equipment (ICE)—To provide funding to jurisdictions across the nation for demonstration projects on uses of equipment and technologies to increase communications interoperability among the fire service, law enforcement, and emergency medical service communities. These projects will illustrate and encourage the acceptance of new technologies and operating methods to assist communities in achieving interoperability.

Earthquake Consortium (EqC)—To operate a program of grants and assistance to enable States to develop mitigation, preparedness and response plans prepare inventories and conduct seismic safety inspection of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes.

Disaster Donations Management Program (AIDMATRRIX)—To distribute technology solutions to State and local government and voluntary agencies throughout the country prior, to a major event, through the Aidmatrix Foundation/FEMA partnership. This will allow end-users to incorporate technology solutions into their planning, increasing their capacity to respond quickly and effectively once a disaster occurs.

Alternative Housing Pilot Program (AHPP)—Evaluate the efficacy of non-traditional short and intermediate-term housing alternatives for potential future use in a catastrophic disaster environment. Identify, develop and evaluate alternatives to and alternative forms of FEMA Disaster Housing to assist victims of the 2005 hurricanes in the Gulf Coast.

Cooperating Technical Partners (CTP)—To increase local involvement in, and ownership of, the development and maintenance of flood hazard maps produced for the National Flood Insurance Program (NFIP).

Map Modernization Management Support (MMMS)—To increase local involvement in, and ownership of, management of the development and maintenance of flood hazard maps produced for the National Flood Insurance

New Repetitive Flood Claims (RFC)—The Repetitive Flood Claims (RFC) Program was authorized in 2004 under Public Law 108–264, funds were not appropriated until FY 2006. The RFC program is authorized under the NFIA to award grants for actions that reduce flood damages to individual properties for which one or more claim payments for losses have been made. FEMA is not required to publish regulations; however, FEMA will provide notice to eligible applicants, post notice on OMB's Grants.gov Web site, and post the RFC program guidance on its Web site at *http://www.fema.gov*.

Flood Mitigation Assistance (FMA)—To assist States and communities in implementing measures to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insurable under the National Flood Insurance Program (NFIP).

Pre-Disaster Mitigation (PDM)—To provide States and communities with a much needed source of pre-disaster mitigation funding for cost-effective hazard mitigation activities that are part of a comprehensive mitigation program, and that reduce injuries, loss of life, and damage and destruction of property. Competitive grants are part of this program including grants to universities.

Assistance to Firefighters Grant (AFG)—To provide direct assistance, on a competitive basis, to fire departments of a State or tribal nation for the purpose of protecting the health and safety of the public and firefighting personnel against fire and fire-related hazards.

Staffing for Adequate Fire and Emergency Response (SAFER)—To

increase the number of firefighters in local communities and to help them meet industry minimum standards and attain 24/7 staffing for adequate protection against fire and fire-related hazards, and fulfill related roles associated with fire departments.

Disaster Programs

Public Assistance Grants (PA)—To provide supplemental assistance to States, local governments, and political subdivisions to the State, Indian Tribes, Alaskan Native Villages, and certain nonprofit organizations in alleviating suffering and hardship resulting from major disasters or emergencies declared by the President.

Crisis Counseling (SCC)—To provide immediate crisis counseling services, when required, to victims of a major Federally-declared disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath.

Presidential Declared Disaster Assistance to Individuals and Households—Other Needs (ONA)—To provide assistance to individuals and households affected by a disaster or emergency declared by the President, and enable them to address necessary expenses and serious needs, which cannot be met through other forms of disaster assistance or through other means such as insurance.

Hazard Mitigation Grant Program (HMGP)—To provide States and local governments' financial assistance to implement measures that will permanently reduce or eliminate future damages and losses from natural hazards through safer building practices and improving existing structures and supporting infrastructure.

Fire Management Assistance Grant (FMAGP)—To provide grants to States, Indian tribal government and local governments for the mitigation, management and control of any fire burning on publicly (nonfederal) or privately owned forest or grassland that threatens such destruction as would constitute a major disaster.

Affected Public: State, local, and tribal government.

ESTIMATED TOTAL ANNUAL BURDEN HOURS

Data collections activity/instruments	Number of respondents per form (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D = A × B)	Total annual burden hours (C × D)
Disaster Programs					
PA:					
SF 424	56	1	1	56	56
FF 20–20	56	1	9.7	56	543
FF 20–16, A, B, C	56	1	1.7	56	95
FF 20–10	56	4	1	224	224
SF–LLL	56	1	0.167	56	9
Sub-total Annual Responses & Burden Hours				448	928
Number of disasters grant applies to				57	57
Total PA				25536	52882
SCC:					
SF 424	17	1	1	17	17
FF 20–20	17	1	9.7	17	165
FF 20–16, A, B, C	17	1	1.7	17	29
FF 20–10 (SF 269)	17	4	1	68	68
SF–LLL	17	1	0.167	17	3
Sub-total Annual Responses & Burden Hours				136	282
Number of disasters grant applies to				57	57
Total SCC				7752	16053
ONA:					
SF 424	40	1	1	40	40
FF 20–20	40	1	9.7	40	388
FF 20–16, A, B, C	40	1	1.7	40	68
FF 20–10	40	4	1	160	160
SF–LLL	40	1	0.167	40	7
Sub-total Annual Responses & Burden Hours				320	663
Number of disasters grant applies to				57	57
Total ONA				18240	37773
HMGP:					
SF 424	52	1	1	52	52
FF 20–20	52	15	9.7	780	7566
FF 20–16, A, B, C	52	1	1.7	52	88
FF 20–10	52	4	1	208	208

ESTIMATED TOTAL ANNUAL BURDEN HOURS—Continued

Data collections activity/instruments	Number of respondents per form (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D = A × B)	Total annual burden hours (C × D)
FF 20–17	52	15	17.2	780	13416
FF 20–18	52	6	4.2	312	1310
FF 20–19	52	6	0.084	312	26
SF LLL	52	1	0.167	52	9
Sub-total Annual Responses & Burden Hours				2548	22676
Number of disasters grant applies to				57	57
Total HMGP				145236	1292514
FMAGP:					
SF 424	12	4	1	48	48
FF 20–20	36	4	9.7	144	1397
FF 20–16, A, B, C	36	4	1.7	144	245
FF 20–15	36	4	17.2	144	2477
FF 20–10	12	4	1	48	48
FF 20–18	36	4	4.2	144	605
FF 20–19	36	4	0.084	144	12
SF–LLL	36	4	0.167	144	24
Sub-total Annual Responses & Burden Hours				960	4855
Number of disasters grant applies to				94	94
Total FMGP				90,240	456,402
Total of Annual Responses and Burden Hours for Disaster-Related Programs				287004	1855625
Non-Disaster Programs					
US&R:					
SF 424	28	1	1	28	28
FF 20–20	28	1	9.7	28	272
FF 20–16, A, B, C	28	1	1.7	28	48
FF 76–10A	28	1	1.2	28	34
FF 20–10	28	2	1	56	56
SF 270	28	1	1	28	28
SF LLL	28	1	0.167	28	5
Total US&R				224	469
CAP–SSSE:					
SF 424	56	1	1	56	56
FF 20–20	56	1	9.7	56	543
FF 20–15	56	1	17.2	56	963
FF 20–16, A, B, C	56	1	1.7	56	95
FF 76–10A	56	1	1.2	56	67
FF 20–10	56	2	1	112	112
FF 20–18	56	1	4.2	56	235
FF 20–19	56	1	0.084	56	5
SF LLL	56	1	0.167	56	9
Total CAP–SSSE				560	2086
CSEPP:					
SF 424	10	1	1	10	10
FF 20–20	10	1	9.7	10	97
FF 20–10	10	4	1	40	40
FF 20–16, A, B, C	10	1	1.7	10	17
FF 76–10A	10	1	1.2	10	12
FF 20–18	10	1	4.2	10	42
FF 20–19	10	1	0.084	10	1
SF LLL	10	1	0.167	10	2
Total CSEPP				110	221
NDSP:					
SF 424	51	1	1	51	51

ESTIMATED TOTAL ANNUAL BURDEN HOURS—Continued

Data collections activity/instruments	Number of respondents per form (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D = A × B)	Total annual burden hours (C × D)
FF 20–20	51	1	9.7	51	495
FF 20–16, A, B, C	51	1	1.7	51	87
FF 76–10A	51	1	1.2	51	61
FF 20–10	51	4	1	204	204
SF 270	51	1	1	51	51
SF LLL	51	1	0.167	51	9
Total NDSP	.....	.....	.....	510	957
ICE:					
FF 20–10	17	4	1	68	68
ICE	.....	.....	.....	68	68
EqC:					
FF 20–10	3	2	1	6	6
Total EqC	.....	.....	.....	6	6
AIDMATRIX:					
SF 424	1	1	1	1	1
FF 20–20	1	1	9.7	1	10
FF 20–10	1	4	1	4	4
FF 20–16 A, B, C	1	1	1.7	1	2
SF LLL	1	1	0.167	1	0
Total AIDMATRIX	.....	.....	.....	8	17
AHPP:					
SF 424	4	1	1	4	4
FF 20–20	4	1	9.7	4	39
FF 20–10	4	4	1	16	16
FF 20–16, A, B, C	4	1	1.7	4	7
SF LLL	4	1	0.167	4	1
Total AHPP	.....	.....	.....	32	66
CTP:					
SF 424	20	1	1	20	20
FF 20–20	20	1	9.7	20	194
FF 20–15	20	1	17.2	20	344
FF 20–16, A, B, C	20	1	1.7	20	34
FF 20–10	20	4	1	80	80
SF LLL	20	1	0.167	20	3
Total CTP	.....	.....	.....	180	675
MMMS:					
SF 424	20	1	1	20	20
FF 20–20	20	1	9.7	20	194
FF 20–15	20	1	17.2	20	344
FF 20–16, A, B, C	20	1	1.7	20	34
FF 20–10	20	2	1	40	40
SF LLL	20	1	0.167	20	3
Total MMMS	.....	.....	.....	140	635
RFC:					
SF 424	56	1	1	56	56
FF 20–20	56	1	9.7	56	543
FF 76–10A	56	1	1.2	56	67
FF 20–16, A, B, C	56	1	1.7	56	95
FF 20–10	56	4	1	224	224
FF 20–18	56	1	4.2	56	235
FF–20–19	56	1	0.084	56	5
SF LLL	56	1	0.167	56	9
Total RFC	.....	.....	.....	616	1235
FMA:					
SF 424	56	3	1	168	168

ESTIMATED TOTAL ANNUAL BURDEN HOURS—Continued

Data collections activity/instruments	Number of respondents per form (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D = A × B)	Total annual burden hours (C × D)
FF 20–20	56	3	9.7	168	1630
FF 20–16, A, B, C	56	1	1.7	56	95
FF 76–10A	56	3	1.2	168	202
FF 20–10	56	4	1	224	224
FF 20–18	56	1	4.2	56	235
FF 20–19	56	1	0.084	56	5
SF LLL	56	1	0.167	56	9
Total FMA	.....	.....	.....	952	2568
PDM:					
SF 424	56	2	1	112	112
FF 20–15	56	1	17.2	56	963
FF 20–20	56	2	9.7	112	1086
FF 76–10A	56	2	1.2	112	134
FF 20–16, A, B, C	56	2	1.7	112	190
FF 20–10	56	8	1	448	448
FF 20–17	56	20	17.2	1120	19264
FF 20–18	56	2	4.2	112	470
FF 20–19	56	2	0.084	112	9
SF LLL	56	2	0.167	112	19
Total PDM	.....	.....	.....	2408	22697
*AFG:					
SF 424*	4948	1	1	4948	4948
FF 20–20	4948	2	9.7	9896	95991
FF 76–10A	4948	2	1.2	9896	11875
FF 20–16, A, B, C	4948	1	1.7	4948	8412
FF 20–10	4948	2	1	9896	9896
FF 20–17	4948	1	17.2	4948	85106
FF 20–18	4948	1	4.2	4948	20782
FF 20–19	4948	1	0.084	4948	416
SF LLL	4948	1	0.167	4948	826
Total AFG	.....	.....	.....	59376	238251
*FP&S:					
SF 424	218	1	1	218	218
FF 20–20	218	2	9.7	436	4229
FF 76–10A	218	2	1.2	436	523
FF 20–16, A, B, C	218	1	1.7	218	371
FF 20–10	218	4	1	872	872
FF 20–17	218	1	17.2	218	3750
FF 20–18	218	1	4.2	218	916
FF 20–19	218	1	0.084	218	18
SF LLL	218	1	0.167	218	36
Total FP&S	.....	.....	.....	3052	10933
*SAFER:					
SF 424	262	1	1	262	262
FF 20–20	262	2	9.7	524	5083
FF 76–10A	262	2	1.2	524	629
FF 20–16, A, B, C	262	1	1.7	262	445
FF 20–10	262	4	1	1048	1048
FF 20–17	262	1	17.2	262	4506
FF 20–18	262	1	4.2	262	1100
FF 20–19	262	1	0.084	262	22
SF LLL	262	1	0.167	262	44
Total SAFER	.....	.....	.....	3668	13140
SRL:					
SF 424	56	1	1	56	56
FF 20–20	56	1	9.7	56	543
FF 76–10A	56	1	1.2	56	67
FF 20–16, A, B, C	56	1	1.7	56	95
FF 20–10	56	4	1	224	224
FF 20–18	56	1	4.2	56	235

ESTIMATED TOTAL ANNUAL BURDEN HOURS—Continued

Data collections activity/instruments	Number of respondents per form (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D = A × B)	Total annual burden hours (C × D)
FF–20–19	56	1	0.084	56	5
SF LLL	56	1	0.167	56	9
Total SRL	.....	.....	.....	616	1235
Total of Annual Responses and Burden Hours for Non-Disaster Programs	.....	.....	.....	72,877	295,261
Total of Annual Responses and Burden Hours for Disaster and Non-Disaster Programs	.....	.....	.....	359881	2150885

Estimated Cost: The annualized hour burden cost to respondents is estimated to be $57,365,765. This estimate is based on the hourly wage rate for State Representative and Fire Department Chiefs completing and submitting the FEMA Grant Administration forms to FEMA for review and approval.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before April 29, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Rosenberg, Section Chief, Mitigation Directorate, (202) 646–3321 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or *e-mail address: FEMA-Information-Collections@dhs.gov*.

Dated: February 13, 2008.

John A. Sharetts-Sullivan,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–3905 Filed 2–28–08; 8:45 am]

BILLING CODE 9110–49–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; this is an extension of a currently approved collection, OMB No. 1660–0103.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the Property Acquisition and Relocation for Open Space process as part of the administration of FEMA's mitigation grant programs.

SUPPLEMENTARY INFORMATION: Rules implementing Property Acquisition and Relocation for Open Space as published at 44 CFR part 80 on October 31, 2007 in the **Federal Register** as an interim rule govern property acquisitions for the creation of open space under all of FEMA mitigation grant programs authorized under both the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121–5206, and the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* Acquisition and relocation of property for open space use is one of the most common mitigation activities, and is an eligible activity type authorized for Federal grant funds under all of FEMA mitigation grant programs. FEMA mitigation grant programs require all properties acquired with FEMA funds to be deed restricted and maintained as open space in perpetuity. This ensures that no future risks from hazards occur to life or structures on that property, and no future disaster assistance or insurance payments are made as a result of damages to that property. This extension of a currently approved collection of information is necessary to establish uniform requirements for State and local implementation of acquisition activities, and to enforce open space maintenance and monitoring requirements for properties acquired with FEMA mitigation grant funds. The interim rule published on October 31, 2007 included a conforming amendment to the Hazard Mitigation Grant Program to refer to the new part 80 for acquisition and relocation activities, and removed 44 CFR 206.434(f), pertaining to the inapplicability of the Uniform Relocation Act.

Collection of Information

Title: Property Acquisition and Relocation for Open Space.

Type of Information Collection: Extension of a currently approved collection.

OMB Number: 1660–0103.

Form Numbers: None.

Abstract: FEMA and State and local recipients of FEMA mitigation grant programs will use the information collected to meet the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities. FEMA and State/

local grant recipients will also use the information to monitor and enforce the open space requirements for all properties acquired with FEMA mitigation grants.

Affected Public: State, local, or Indian tribal government and individuals or households.

Estimated Total Annual Burden Hours: 11,424.

ANNUAL BURDEN HOURS

Project/activity	Number of respondents (A)	Frequency of responses (B)	Number of Responses (C)	Hours per burden response (A × B)	Total annual burden hours (A × B × C)
Voluntary Participation Statement	56	40	1	2,240	2,240
Deed Restriction Requirements	56	40	4	2,240	8,960
Monitoring and Reporting Requirements	56	1	4	56	224
Transfer Certification					
Enforcement Notices					
Total	56		9	4,536	11,424

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before April 29, 2008.

ADDRESSES: Interested persons should submit written comments to Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Rosenberg, Branch Chief, Mitigation Directorate, (202) 646–3321 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: February 12, 2008.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–3906 Filed 2–28–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved collection, OMB No. 1660–0062.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revised information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning State Hazard Mitigation Plan requirements to support State administration of FEMA Mitigation grant programs.

SUPPLEMENTARY INFORMATION: On February 26, 2002, FEMA published an interim rule at 67 FR 884 implementing section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5165, enacted under section 104 of the Disaster Mitigation Act of 2000, 42 U.S.C. 5121 note, to provide new and revitalized approaches to mitigation planning. The Stafford Act provides a framework for linking pre-and-post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. Pursuant to 44 CFR part 201, the mitigation planning requirements require State, local and Indian tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide-range of resources.

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans—Section 322 of the Disaster Mitigation Act of 2000.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0062.

Form Numbers: None.

Abstract: The purpose of State Hazard Mitigation Plan requirements is to support State administration of FEMA Mitigation grant programs, and contemplate a significant State commitment to mitigation activities, comprehensive State mitigation planning, and strong program management. Implementation of plans, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals, priorities to reduce risks from natural hazards.

Affected Public: State, local or tribal governments, and Individuals or households.

Estimated Total Annual Burden Hours: 768,320.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per response (C)	Annual responses (A×B)	Total annual burden hours (A×B×C)
New Plan Development (Local and Tribal Mitigation Included)	56	5	2080	280	582,400
Mitigation Plan Updates (Local and Tribal Included)	56	10	320	560	179,200
Mitigation Plans Review by States (Local and Tribal Included)	56	15	8	840	6,720
Total	56		2,408	1,680	768,320

Estimated Cost: The total burden hour costs to respondents using the wage rate categories of Urban and Regional Planners for this information collection is estimated to be $21,282,464 annually. The total annual cost to the Federal Government for staff review and approval of State Hazard Mitigation Plans is estimated to be $226,447 annually.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be submitted on or before April 29, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, 1800 S. Bell Street, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Contact Cecelia Rosenberg, Section Chief, Mitigation Directorate, (202) 646–3321 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Dated: February 13, 2008.

John A. Sharetts-Sullivan,

Director, Records Management and Privacy, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–3908 Filed 2–28–08; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–09]

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:* February 29, 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: February 21, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 08–852 Filed 2–28–08; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R–ES–2008–N0038; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before March 31, 2008.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist, see **ADDRESSES**, (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A)

of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests. 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.

Permit No. TE–174276

Applicant: Bio Spatial Solutions, LLC, Elk Grove, California.

The applicant requests an amendment to take (capture, collect, kill, and hatch cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and research throughout the range of each species in California, for the purpose of enhancing their survival.

Permit No. TE–174305

Applicant: Vandenberg Air Force Base, Vandenberg AFB, California.

The applicant requests an amendment to take (survey, locate, and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) and the Southwestern willow flycatcher (*Empidonax traillii extimus*); take (survey, capture, and release) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) and tidewater goby (*Eucyclogobius newberryi*); take (survey by pursuit) the El Segundo Blue butterfly (*Euphilotes battoides allyni*), and remove/remove to possession the *Rorippa gambellii* (Gambel's watercress), *Hemizonia increscens* ssp. *villosa* (Gaviota tarplant), *Layia carnosa* (Beach layia), *Eriodictyon capitatum* (Lompoc Yerba Santa), and *Cirsium loncholepis* (La Graciosa thistle) from Federal lands, in conjunction with surveys and population monitoring throughout Vandenberg Air Force Base in California, for the purpose of enhancing its survival.

Permit No. TE–058073

Applicant: Susan Christopher, Santa Margarita, California.

The permittee requests an amendment to take (harass by survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in California, for the purpose of enhancing its survival.

Permit No. TE–172629

Applicant: Christina Sloop, Santa Rosa, California.

The applicant requests an amendment to remove/remove to possession the *Limnanthes floccosa* ssp. *Californica* (Butte County meadowfoam), *Limnanthes vinculans* (Sebastopol meadowfoam), *Lasthenia burkei* (Burke's goldfields), and *Plennosperma bakeri* (Sonoma sunshine) from federal lands in conjunction with genetic sampling for the purpose of enhancing their survival.

Permit No. TE–122602

Applicant: Joseph B. Platt, Irvine, California.

The applicant requests an amendment to take (harass by survey) the Southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in California and Arizona, for the purpose of enhancing its survival.

Permit No. TE–875386

Applicant: California Cooperative Research Unit, Arcata, California.

The applicant requests an amendment to remove/remove to possession the *Amsinckia grandiflora* (Large flowered fiddleneck), *Cordylanthus mollis* spp. *mollis* (Soft bird's beak), *Erysimum captitatum* ssp. *angustatum* (Contra Costa wallflower), *Lasthenia conjugens* (Contra Costa goldfields), *Oenthera deltoids* ssp. *howelii,* (Antioch Dunes evening primrose), Orcuttia tenuis, (Slender orcutt grass), *Orcuttia viscida,* (Sacramento Orcutt grass), and *Tuctoria mucronata,* (Solano grass) from federal lands in conjunction with botanical surveys for the purpose of enhancing their survival.

Permit No. TE–175385

Applicant: Ammon M. Rice, Roseville, California.

The applicant requests an amendment to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California, for the purpose of enhancing their survival.

Permit No. TE–108093

Applicant: Daniele Tannourji, Santa Cruz, California.

The applicant requests an amendment to remove/remove to possession the *Lasthenia conjugens* (Contra Costa goldfields) from federal lands in conjunction with botanical surveys and germination studies for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Dated: February 25, 2008.

Michael Fris,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. E8–3900 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Willamette Valley National Wildlife Refuge Complex, Corvallis, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) intend to prepare a Comprehensive Conservation Plan (CCP) for the William L. Finley, Baskett Slough, and Ankeny National Wildlife Refuges (Refuges). We will also prepare an environmental assessment (EA) evaluating effects of various CCP alternatives. The Refuges are located in the Willamette Valley, within Benton, Linn, Marion, and Polk Counties, Oregon. We are furnishing this notice to advise other government agencies, Tribes, and the public of our intentions, and to obtain public comments, suggestions, and information on the scope of issues to be considered during the planning process.

DATES: We request your written comments on the scope of the CCP by March 31, 2008. All comments received during scoping will be considered during development of the Draft CCP and EA.

ADDRESSES: Address comments, questions, and requests for information to: Doug Spencer, Project Leader, Willamette Valley National Wildlife Refuge Complex, 26208 Finley Refuge Rd., Corvallis, OR 97333. Comments may be faxed to (541) 757–4450, or e-mailed to *FW1PlanningComments@fws.gov.* Include Willamette Valley Refuges CCP in the subject line of your message. Additional information about the CCP planning process is available on the Internet at: *http://www.fws.gov/willamettevalley/ccp.*

FOR FURTHER INFORMATION CONTACT: Doug Spencer, Project Leader, Willamette Valley National Wildlife Refuge Complex, phone (541) 757–7236.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), requires all lands within the National Wildlife Refuge System to be managed in accordance with an approved CCP. A CCP guides refuge management decisions, and identifies long-range goals, objectives, and strategies for achieving the purposes for which the refuge was established. During the CCP planning process many elements will be considered, including wildlife and habitat protection and management, public use opportunities, and cultural resource protection. Public input during the planning process is essential. The CCP for the William L. Finley, Baskett Slough, and Ankeny Refuges will describe desired Refuge conditions and the long-term goals, objectives, and strategies for achieving those conditions. To evaluate potential impacts of CCP alternatives, we will prepare an environmental assessment in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371 *et seq.*)

Background

The Refuges were established in the 1960s under the Migratory Bird Conservation Act ''for use as an inviolate sanctuary, or for any other management purpose, for migratory birds * * * to conserve and protect migratory birds * * * and to restore or develop adequate wildlife habitat'' with emphasis on protecting dusky Canada geese. The Refuges' habitats include wetlands, wet prairies, upland oak woodland, oak savanna/upland prairie, mixed-deciduous woodlands, riparian, and riverine. Agricultural lands, the majority managed as grass fields, are also present on the Refuges. The Refuges support a significant portion of the wintering dusky Canada goose population in addition to other subspecies of Canada geese, and contain some of the last tracts of native habitats in the Willamette Valley, particularly wet prairie and oak savanna/upland prairie. The Refuges support key populations of federally listed species, including Oregon chub, Fender's blue butterfly, Bradshaw's desert-parsley, Kincaid's lupine, Nelson's checker-mallow, and Willamette daisy. Many other rare, but not yet listed species are also found on the Refuges. Additional information on the Refuges is available at: *http://www.fws.gov/willamettevalley.*

Preliminary Issues, Concerns, and Opportunities

We identified the following categories of preliminary issues for consideration in the planning process: The Refuges' role in wintering Canada geese habitat; restoration and maintenance of native habitats; maintenance and recovery of listed and rare species; managing Roosevelt elk on William L. Finley Refuge; water and wetland management; providing sustainable wildlife-dependent recreation; maintaining historical structures; managing invasive species; and managing on-going Refuge programs and commitments in an era of tight budgets. Additional issues may be identified during public scoping.

Public Availability of Comments

All comments we receive become part of the public record. Requests for comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. 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 to withhold it from public review, we cannot guarantee we will be able to do so.

Dated: December 5, 2007.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. E8–3898 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–300–2824–DS–PJ04]

Notice of Availability of Fire, Fuels and Related Vegetation Management Direction Proposed Plan Amendment and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Fire, Fuels, and Related Vegetation Management Direction Proposed Plan Amendment (FMDA) and Final Environmental Impact Statement (FEIS).

SUMMARY: The Burley and the Shoshone Field Offices of the Twin Falls District and the Pocatello and Upper Snake Field Offices of the Idaho Falls District of the Bureau of Land Management (BLM), located in south-central and eastern Idaho, have prepared a proposed land use plan amendment and environmental impact statement to establish management guidance and objectives for vegetation resources as they relate to fire and fuels. This planning process is in conformance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Wildland Fire Management Policy of 1995, as revised. The Proposed Plan Amendment is Alternative E, developed in response to public comment. Alternative E, which emphasizes protection and restoration of both rangeland and forest resources, is also considered to be the environmentally preferred alternative.

DATES: No decision on the proposed plan will be made for at least 30 days after the Environmental Protection Agency publishes its Notice of Availability of this Final EIS in the **Federal Register**. BLM regulations (43 CFR 1610.5–2) state that any person who participated in the planning process and has an interest that may be adversely affected may protest the BLM's approval of the FMDA FEIS. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability.

Instructions for filing protests with the BLM are included in the Dear Reader letter of the FMDA FEIS and in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Copies of the FEIS are available upon request from the Pocatello Field Office, Bureau of Land Management, 4350 Cliffs Drive,

Pocatello, Idaho 83204, phone 208–478–6340, or at *http://www.blm.gov/id/st/en/prog/planning/firefuels_and_related.html* via the internet. Upon request additional copies in both paper and digital format are available in limited numbers.

FOR FURTHER INFORMATION CONTACT: Terry Lee Smith, FMDA Project Manager, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone 208–478–6392, email *Terry_Lee_Smith@blm.gov*.

SUPPLEMENTARY INFORMATION: Copies of the FMDA FEIS have been sent to affected Tribes, Federal, State, and local government agencies and to interested parties. The FMDA FEIS was developed with broad public participation through a five year collaborative planning process. It addresses management on approximately 5 million acres of public land comprising the Burley, Shoshone, Pocatello and Upper Snake Field Offices in south-central and eastern Idaho.

The FMDA FEIS would incorporate the National Fire Plan's Cohesive Strategy and the Federal Wildland Fire Management Policy into existing BLM land use plans. The FEIS displays the environmental effects of implementing those amended plans. The purpose of the proposed fire management plan amendments is to:

- Establish fire management guidance, objectives, policies, and management actions;
- Identify resource goals and methods, including desired future condition of the fire-related vegetation resources, and management actions necessary to achieve objectives;
- Form the basis to update fire management plans and integrate them with allotment management plans, wildlife management plans, recreation management plans, Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing, and other applicable plans, to the greatest extent possible; and
- Provide consistent land use plan level direction to enable incremental steps toward a long-term resource goal of conditions that minimize risk to human life and property and maintain or restore vegetation that is resistant to catastrophic wildfire.

Five alternatives were analyzed in the FEIS. Alternative A, the No Action alternative, reflects current Land Use Plan direction, emphasizes wildland fire suppression, and minimizes the use of wildland fire for resource benefit. Alternative B emphasizes the increased use of fire, including prescribed fire and wildland fire use to more closely approximate the historical role of fire and the preparation of sites for restoration treatments. Alternative C identifies full implementation of the Cohesive Strategy from the National Fire Plan (treats more acres with prescribed fire than the other alternatives). Alternative D focuses on maintaining or restoring the sagebrush steppe ecosystem and its associated wildlife species, including sage grouse. Alternative E, the proposed plan amendment, proposes maintaining or restoring the sagebrush steppe ecosystem and its associated wildlife species, including sage grouse as well as the maintenance and restoration of forested vegetation types.

The Draft Plan Amendment/DEIS was released to the public on November 5, 2004 for a 90-day public comment period. Copies of the Draft Plan Amendment/DEIS were mailed to interested publics, the document was posted on the BLM Idaho internet site, news releases were published in area local newspapers announcing the availability of the document. In early December 2004, public meetings were held in Idaho Falls, Pocatello, Boise, and Twin Falls, Idaho to facilitate public review and comment by providing summary information and answering questions during the public comment period. Based on public comments, Alternative E was developed from a combination of Alternative D with the forested vegetation component of Alternative C to provide an alternative that focuses on the fire management needs of both forested and rangeland vegetation types. Alternative E is analyzed in the FMDA FEIS.

Instructions for filing a protest with the Director of the BLM regarding the FMDA FEIS may be found at 43 CFR 1610.5–2. Electronic mail and facsimile protests will be considered only if the protesting party provides BLM with the original letter by either regular or overnight mail postmarked by the close of the protest period. Under those conditions, the BLM will consider the electronic or faxed version as an advance copy, and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM Protest Coordinator at (202) 452–5112 and electronic mails to *Brenda_Hudgens-Williams@blm.gov*. All protests, including the follow-up letter (if electronically mailed or faxed) must be in writing and mailed to one of the following addresses:

Regular Mail, Director (210), Attn: Brenda Hudgens-Williams, P.O. Box 66538, Washington, DC 20036.

Overnight Mail, Director (210), Attn: Brenda Hudgens-Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

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

Thomas H. Dyer,

Bureau of Land Management, Idaho State Director.

[FR Doc. E8–3784 Filed 2–27–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID 111 1610 DQ 049D DBG071006]

Notice of Availability of Snake River Birds of Prey National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the Snake River Birds of Prey National Conservation Area (NCA).

DATES: The BLM Planning regulations (43CFR 1610.5–2) state that any person who participated in the planning process and has an interest that may be adversely affected may protest the BLM's Proposed RMP. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register**.

Instructions for filing protests are described in the Dear Reader letter of the NCA PRMP/FEIS and in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: John Sullivan, NCA Manager, BLM Four Rivers Field Office, 3948 Development Ave., Boise, Idaho 83705, phone 208–

384–3300; e-mail address: *John_Sullivan@blm.gov*.

SUPPLEMENTARY INFORMATION: The NCA encompasses approximately 484,000 acres of public land extending along 81 miles of the Snake River south of Boise, Idaho. The NCA was established on August 4, 1993 by Public Law 103–64 for the purpose of conserving, protecting, and enhancing North America's densest concentration of nesting and migrating raptor populations and habitats, and the natural and environmental resources and values associated with the area.

Key components of the proposed plan include land allocations and management guidance that provide for:

- Reducing further wildfire-related loss of native shrub habitat through aggressive wildfire suppression; however, it is anticipated that about 30,000 additional acres of remnant shrub habitat could potentially be lost to wildfire.
- Restoring 130,000 acres of degraded shrub habitat to stabilize small mammal populations which provide prey for raptors.
- Completing 100,000 acres of fuels management projects to protect the economic and ecological investments made in the habitat restoration program.
- Restricting or modifying currently authorized National Guard military training activities, including the restriction of off-road vehicle maneuver training on 22,300 acres; limiting vehicle maneuver training to non-shrub areas in the remaining maneuver areas to protect remnant shrub communities; and providing 4,100 additional acres to enhance military maneuvers.
- Remove the Area of Critical Environmental Concern (ACEC) designation for the Guffey Butte—Black Butte Archaeological District ACEC to eliminate redundant protective designations. The Guffey Butte—Black Butte Archaeological District ACEC was designated prior to establishment of the NCA in 1993. The protective withdrawal language included in the ACEC designation is redundant with those protections provided by the NCA-enabling Act and the Archaeological District designation and is therefore unneccessary.

Copies of the NCA Proposed RMP/FEIS have been sent to affected Federal, State, and Local Government agencies and to interested organizations and individuals. Copies of the Proposed RMP/FEIS are available for public inspection at the BLM Boise District Office, 3948 Development Ave., Boise, ID 83705. Interested persons may also view the Proposed RMP/FEIS on the Internet at *http://www.id.blm.gov/id/st/en/prop/planning.1.html.* Changes were incorporated into the proposed plan based on public comments and internal BLM review of the Draft RMP and Environmental Impact Statement (EIS). Public comments resulted in BLM incorporating in the Proposed Alternative a new utility corridor south of the Snake River to be consistent with proposals being evaluated in the West-Wide Energy Corridor Study EIS. Further, BLM removed from the Proposed Alternative the proposed expansion of the existing shooting management area. No other proposed land use decisions were significantly affected, but comments did result in BLM adding clarifying language to certain sections.

As noted above, instructions for filing protests with the Director of the BLM regarding the Proposed RMP/FEIS may be found at 43 CFR 1610.5–2. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions the BLM will consider the e-mail or faxed protest as an advanced copy, and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM Protest Coordinator at (202) 452–5112 and e-mails to *Brenda_Hudgens-Williams@blm.gov*. All protests, including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to the following address:

Regular mail	Overnight mail
Diretor (210), Attention: Brenda Hudgens-Williams, P.O. Box 66538, Washington, DC 20035..	Director (210), Attention: Brenda Hudgens-Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

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

Following resolution of any protests of the proposed decision, a record of decision will be signed by the BLM Idaho State Director. A notice of availability of the record of decision will be published in the **Federal Register** and will be made available through local media.

Thomas H. Dyer,

Bureau of Land Management, Idaho State Director.

[FR Doc. E8–3942 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–024–1610–DO–094L]

Notice of Intent To Prepare a Resource Management Plan and Environmental Impact Statement for BLM-Alaska's Eastern Interior Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Eastern Interior Field Office, Fairbanks, Alaska, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the Eastern Interior Planning Area and by this notice announces the beginning of the public scoping period. Public scoping meetings will be held in Fairbanks, Delta Junction, Tok, Eagle, Chicken, Central, and Anchorage. Additional public scoping meetings may be held at Circle, Chalkyitsik, Fort Yukon, Stevens Village, Beaver, Birch Creek and other locations to be determined at a later date. The RMP will replace the existing Steese National Conservation Area Resource Management Plan, the White Mountains National Recreation Area Resource Management Plan, and the Fortymile Management Framework Plan. The RMP will also make land use decisions on previously unplanned public lands in the Upper Black River subunit.

DATES: The public scoping period will begin with the publication of this notice.

Formal scoping will end on July 1, 2008. The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site, *http://www.blm.gov/ak*, at least 15 days prior to the first meeting. We will provide formal opportunities for public participation after release of the Draft RMP/EIS.

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

- *E-mail: eirmp_comments@blm.gov.*
- *Fax:* (907) 474–2282.

• *Mail:* BLM Eastern Interior Field Office, Attention: Jeanie Cole, 1150 University Ave., Fairbanks, AK 99709.

Documents pertinent to this proposal may be examined at the Eastern Interior Field Office, Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Jeanie Cole, telephone (907) 474–2340; e-mail *jeanie_cole@blm.gov*.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Eastern Interior Field Office, Fairbanks, Alaska, intends to prepare an RMP with an associated EIS for the Eastern Interior Planning Area and announces public scoping meetings.

The planning area is located in eastern Alaska and is bounded by the Brooks Range on the north, the Dalton and Elliott Highways on the west, the BLM Fairbanks/Anchorage District boundary on the south, and the U.S.-Canada border on the east. The planning area includes four subunits: the Steese National Conservation Area (SNCA), the White Mountains National Recreation Area (WMNRA), the Fortymile River subunit, and the Upper Black River subunit. Two of the subunits, the SNCA and WMNRA, require their own separate Record of Decision (ROD) due to their status as units of the BLM National Landscape Conservation System. Decisions on the Fortymile and Black River subunits will be combined into one ROD. The planning area also includes three national wild and scenic rivers: Beaver Creek, Birch Creek, and the Fortymile River. This planning activity encompasses approximately 8 million acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions best suited to local, regional, and national needs and concerns.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and RMP alternatives. These issues also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM, at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit formal scoping comments before July 1, 2008. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. The BLM will honor such requests to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date regarding the existing issues and concerns with current land management.

The major issues or management concerns that will be addressed in this planning effort include management of: recreational use, off-highway vehicles and access, minerals and energy resources, land tenure and realty, wild and scenic rivers, wildlife and fisheries, and subsistence use.

After public comments are gathered about issues the plan should address, the issues will be placed into the following categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the plan as to why an issue was placed in categories two or three. In addition to these major issues, the plan will address a number of management questions and concerns and the public is encouraged to help identify these during the scoping phase.

Preliminary planning criteria are:

1. Public participation by interested groups and individuals will be encouraged throughout the RMP/EIS process.

2. Valid existing rights will be recognized and protected.

3. Subsistence uses will be considered and adverse impacts minimized in accordance with Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA).

4. The BLM will work cooperatively with State and Federal agencies, Native corporations, Tribes, and Municipal governments. Agencies (including federally recognized tribal governments) with jurisdiction by law or special expertise will be consulted to determine if cooperating agency status is appropriate and desired.

5. Wildlife habitat management will be consistent with Alaska Department of Fish and Game (ADF&G) objectives and/or the Federal Subsistence Board requirements and mandates.

6. Resource management plans prepared by the BLM will conform to the Bureau's H–1601–1 Land Use Planning Handbook, Appendix C, Program-Specific and Resource-Specific Decision Guidance and supplemental program guidance manual for Areas of Critical Environmental Concern (ACECs) and Fluid Minerals.

7. The plan will be consistent with the standards and guidance set forth in the Federal Land Policy and Management Act (FLPMA), the National Environmental Policy Act (NEPA), the Council on Environmental Quality, the National Historic Preservation Act, the Wild and Scenic Rivers Act, the Migratory Bird Treaty Act, ANILCA, and other Federal laws, regulations, and policies as required.

8. The plan will be consistent with the BLM-Alaska Land Health Standards.

9. Off-highway vehicles designations for all public lands within the planning area will be completed according to the regulations found in 43 CFR 8342.

10. Areas proposed for Area of Critical Environmental Concern designation will meet the criteria found in 43 CFR 1610.7–2.

11. The plan will address all lands within the Eastern Interior planning area managed by the BLM (excluding military reservations).

12. Review and classification of waterways as eligible for inclusion in the National Wild and Scenic River System will follow the guidance found in the BLM Manual 8351, Wild and Scenic Rivers—Policy and Program Direction for Identification, Evaluation, and Management.

13. The Economic Profile System developed for the BLM by the Sonoran Institute, or equivalent, will be used to characterize baseline social and economic conditions.

14. The BLM will incorporate Environmental Justice (EJ) considerations in land use planning alternatives to adequately respond to EJ issues facing minority populations, low income communities, and Tribes living near public lands and using public land resources.

15. The analysis will employ guidance provided in the BLM Land Use Planning Handbook H–1601–1, Appendix D, Social Science

Considerations in Land Use Planning Decisions.

16. Wilderness will not be considered in this plan unless Alaska's Governor or a member of the Congressional Delegation for Alaska recommends a particular area for study.

The BLM will use an interdisciplinary approach to develop the plan to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: outdoor recreation, minerals and geology, forestry, archeology, wildlife and fisheries, lands and realty, hydrology, soils, subsistence, sociology and economics, visual resource management, and vegetation.

Dated: February 22, 2008.

Thomas P. Lonnie,

State Director.

[FR Doc. E8–3924 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1610–DN]

Notice of Intent To Prepare a Resource Management Plan Revision for the Rio Puerco Field Office, New Mexico and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Rio Puerco Field Office, Albuquerque, New Mexico, intends to prepare a Resource Management Plan Revision for the Rio Puerco Field Office with an associated Environmental Impact Statement, and by this notice is announcing public scoping meetings. The Resource Management Plan Revision will replace the existing Rio Puerco Resource Management Plan as currently maintained and amended.

DATES: The BLM will announce public scoping meetings to identify relevant issues through local news media, newsletters, and the BLM Web site, *www.blm.gov/nm,* at least 15 days prior to the first meeting. We will provide formal opportunities for public participation upon publication of the Draft Resource Management Plan/Environmental Impact Statement.

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

- *Web Site: http://www.blm.gov/nm.*
- *E-mail: Joe_Blackmon@blm.gov.*
- *Fax:* 505–761–8911.
- *Mail:* RP RMP, Rio Puerco Field Office, 435 Montaño RD, NE., Albuquerque, NM 87107.

Documents pertinent to this proposal may be examined at the Rio Puerco Field Office, 435 Montaño RD, NE., Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: To have your name added to our mailing list and/or for general information, contact Joe Blackmon, Telephone 505–761–8918; e-mail *Joe_Blackmon@blm.gov* or Sabrina Flores, Telephone 505–761–8794; e-mail *Sabrina_Flores@blm.gov*.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Rio Puerco Field Office, Albuquerque, New Mexico, intends to prepare a Resource Management Plan Revision with an associated Environmental Impact Statement (RMPR/EIS) and announces public scoping meetings.

The planning area is located in Bernalillo, Cibola, McKinley, Sandoval, Torrance, and Valencia Counties, New Mexico. This planning activity encompasses approximately 997,000 acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will seek to work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. These issues also guide the planning process. You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit formal scoping comments within 30 days after the last public meeting. Before including your address, phone number, email 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. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. They represent the BLM's knowledge to date regarding the existing issues and concerns with current land management. The major issues that will be addressed in this planning effort include: Land Tenure Adjustment; Mineral and Energy Development; Recreation and Visitor Services; Visual Resources Management; Special Area Designations; Travel and Trails Management; and Public Land-Urban Interface.

After the public comments as to what issues the plan should address are gathered, they will be placed in one of three categories:

1. Issues to be resolved in the plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the plan as to why issues were placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase.

Preliminary planning criteria are:

- The RMPR will be in compliance with FLPMA, NEPA, and all other applicable laws, regulations, and policies.
- Land use decisions in the RMPR will only apply to surface and subsurface estate managed by the BLM.
- For program-specific guidance for decisions at the land use planning level, the process will follow the BLM's Land Use Planning Handbook, H–1601–1.
- Broad-based public participation and collaboration will be an integral part of the planning process.
- The BLM will strive to make decisions in the plan compatible with the existing plans and policies of adjacent local, state, and federal agencies and local American Indian tribes, as long as the decisions are consistent with the purposes, policies, and programs of federal law and regulations applicable to public lands.
- The BLM recognizes the state's responsibility and authority to manage wildlife while the BLM manages habitat.
- The BLM will consult with the New Mexico Department of Game and Fish.
- The RMPR will recognize valid existing rights.

• The RMPR will incorporate, where applicable, management decisions brought forward from existing planning documents.

• The BLM will work cooperatively and collaboratively with cooperating agencies and all other interested groups, agencies, and individuals.

• The BLM and cooperating agencies will jointly develop alternatives for resolution of resource management issues and management concerns.

• The planning process will incorporate the New Mexico *Standards for Public Land Health and Guidelines for Livestock Grazing Management*. Changes in grazing management will only be considered in Unit 5.

• Areas with special or unique resource values will be evaluated for potential administrative designations, including Areas of Critical Environmental Concern, or other appropriate designations.

• Any free flowing river and its associated land corridor found to be eligible for inclusion in the National Wild and Scenic River System (NWSRS) will be addressed in the RMPR by developing alternatives for its suitability for inclusion in the NWSRS and interim protective management of its outstandingly remarkable values.

• Wilderness Study Areas will continue to be managed under the BLM's *Interim Management Policy for Lands under Wilderness Review* (IMP) until Congress either designates all or portions of the WSA as wilderness or releases the lands from further wilderness consideration. The BLM no longer designates additional WSAs through the RMP process, or manages any lands other than existing WSAs in accordance with the Wilderness IMP. Areas with wilderness characteristics, however, will be considered in the RMP as described in Appendix C of the Land Use Planning Handbook.

• Forest management strategies will be consistent with the Healthy Forests Restoration Act.

• Fire management strategies will be consistent with the Albuquerque District Fire Management Plan (2004 or as it may subsequently be amended).

• GIS and metadata information will meet Federal Geographic Data Committee (FGDC) standards, as required by Executive Order 12906. All other applicable BLM data standards will also be followed.

• The planning process will provide for ongoing consultation with American Indian tribal governments and strategies for protecting recognized traditional uses.

• Planning and management direction will focus on the relative values of resources and not the combination of uses that will give the greatest economic return or economic output.

• Where practicable and timely for the planning effort, the best available scientific information, research, and new technologies will be used.

• The Economic Profile System (EPS) will be used as one source of demographic and economic data for the planning process. EPS data will provide baseline data and contribute to estimates of existing and projected social and economic conditions.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: air quality, archaeology and cultural resources, cave and karst resources, energy resources, facilities development, forestry, hydrology, lands and realty, minerals and geology, outdoor recreation, paleontology, rangeland management, sociology and economics, soils, special status species, visual resources management, wildland fire ecology, wilderness resources, wildlife and fisheries.

Linda S.C. Rundell,

New Mexico State Director.

[FR Doc. E8–3943 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW155778]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from EOG Resources, Inc. and Southwestern Energy Production Company for Competitive oil and gas lease WYW155778 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅓ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW155778 effective September 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E8–3862 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310-FI; WYW155779]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from EOG Resources, Inc. and Southwestern Energy Production Company for Competitive oil and gas lease WYW155779 for land in Sweetwater County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to

reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW155779 effective September 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E8–3863 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310-FI; WYW158648]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Mike Tinker for Competitive oil and gas lease WYW158648 for land in Big Horn County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW158648 effective October 1, 2007, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E8–3864 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310-FI; WYW158649]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

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Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E8–3866 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Southern Delivery System, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability for the Southern Delivery System Draft Environmental Impact Statement (Draft EIS) and Announcement of Public Meetings.

SUMMARY: The Bureau of Reclamation published a notice in the **Federal Register** on September 8, 2003, (68 FR 52953) announcing commencement of work under the National Environmental Policy Act (NEPA) on an environmental impact statement for the Southern Delivery System project (SDS). We are now notifying the public that Reclamation has completed the Draft EIS which is now available for public review and comment. The U.S. Army Corps of Engineers, Environmental Protection Agency, Bureau of Land Management, and U.S. Fish and Wildlife Service are cooperating agencies in preparing the Draft EIS. The Draft EIS provides information and analyses on seven alternatives that were developed for the project based on key issues. Ten key issues relevant to the proposed SDS associated with water flow and quality, stream channel morphology, sedimentation, water rights, fish and aquatic life, wetlands, wildlife, socioeconomics, and recreation are addressed in the analysis. Significant effects on natural resources are examined and mitigation measures, where appropriate to avoid or minimize impacts, are incorporated into the alternatives. The Draft EIS includes appendices with technical analyses and supporting documentation of the analysis findings and summaries.

DATES: A 60-day public comment period on the Draft EIS commences with the publication of this notice. Written comments are due by April 26, 2008, and should be submitted to the address provided below.

ADDRESSES: Send comments in writing on the Draft EIS to: Southern Delivery System EIS, *Attention:* Ms. Kara Lamb, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537–9711. Comments may also be submitted via facsimile at (970) 663–3212 (*attention:* Ms. Kara Lamb; Southern Delivery System EIS) or *e-mail to: klamb@gp.usbr.gov*.

FOR FURTHER INFORMATION CONTACT:

Additional Information and Copies of Reports: For copies of the Draft EIS and

or copies of the technical reports, please send written requests to Ms. Kara Lamb, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537–9711 or *e-mail to: klamb@gp.usbr.gov*. The full reports and documents are also available on the project Web site at: *www.sdeis.com*. For additional information please contact Ms. Kara Lamb at (970) 962–4326.

SUPPLEMENTARY INFORMATION:

Reclamation will hold public meetings (in an open house format) to receive verbal and written comments on the Draft EIS at the following places and times:

Public Meeting Dates

- April 1, 2008, 6 p.m.–9 p.m.—Buena Vista, CO.
- April 2, 2008, 6 p.m.–9 p.m.—Pueblo, CO.
- April 3, 2008, 6 p.m.–9 p.m.—La Junta, CO.
- April 8, 2008, 6 p.m.–9 p.m.—Fountain, CO.
- April 9, 2008, 6 p.m.–9 p.m.—Colorado Springs, CO.
- April 10, 2008, 6 p.m.–9 p.m.—Canon City, CO.

Public Meeting Locations

- Buena Vista Community Center, 715 E. Main, Buena Vista, CO 81211.
- Sangre de Cristo Arts and Conference Center, 210 North Santa Fe Avenue, Pueblo, CO 81003.
- Koshare Indian Museum, 115 W. 18th Street, La Junta, CO 81050.
- Fountain-Fort Carson High School, 900 Jimmy Camp Road, Fountain, CO 80817.
- Leon Young Service Center—Pikes Peak Room, 1521 Hancock Expressway, Colorado Springs, CO 80903.
- Quality Inn and Suites, 3075 E. US 50, Canon City, CO 81212.

Public Review Locations

Copies of the Draft EIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537.
- Buena Vista/North Chaffee County Library, 131 Linderman Ave., Buena Vista, CO 81211.
- Cañon City Public Library, 516 Macon Ave., Cañon City, CO 81212.
- Pikes Peak Library District—Penrose Library, 20 N Cascade Ave., Colorado Springs, CO 80903.
- Pueblo City-County Library District, 100 E Abriendo Ave., Pueblo, CO 81004.
- Woodruff Memorial Library, 522 Colorado Ave., La Junta, CO 81050.

Background: In February 2003, the proposed project's non-Federal participants (City of Colorado Springs, City of Fountain, Security Water District, and Pueblo West Metropolitan District) requested a long-term water conveyance contract from Reclamation in association with the SDS project. In July 2003, Colorado Springs Utilities also requested a long-term contract for storage of water in Pueblo Reservoir. Because the SDS project would involve Federal actions in the form of long-term storage and conveyance contracts from Reclamation, it was determined that Reclamation should be the lead Federal agency for preparing the EIS. Reclamation began the formal scoping process in September 2003 with a series of public open houses to provide information on the SDS project and to receive comments regarding the proposed project from the public. Scoping comments regarding the SDS project were formally received through October 2003. However, Reclamation has continued to receive and consider public comments during preparation of the Draft EIS. The SDS EIS Scoping Report, released in January 2004, summarized comments collected during formal scoping. Those same comments were used to identify ten key issues that are described and evaluated in the Draft EIS. In October 2005, Reclamation hosted five public workshops regarding alternative development for the SDS EIS. The purpose of the workshops was to present the alternatives that are proposed for detailed evaluation in the EIS and to solicit public comment on other potential alternatives that would address environmental issues. The Draft EIS will be available for public review and comment prior to a series of public meetings to receive comments on it. A Final EIS will be prepared subsequent to the close of the comment period on the Draft EIS. The Final EIS is expected to be completed in late 2008 after which Reclamation will approve a Record of Decision (ROD) describing its decision on the SDS project.

Proposed Federal Action: Reclamation proposes to enter into contracts with the Participants and issue special use permits where needed so that the SDS project can be constructed and operated. The proposed Federal action includes three elements that are considered in the Draft EIS. These include: (1) Approval of Federal water storage, conveyance, and exchange contracts; (2) issuance of Federal special use permits; and (3) capacity trade in the Fountain Valley Authority pipeline. The City of Colorado Springs (Colorado Springs), City of Fountain (Fountain), Security Water District (Security), and Pueblo West Metropolitan District (Pueblo West), collectively referred to as the Participants, have requested contracts and special use permits with the Department of the Interior, Bureau of Reclamation. The Participants require contracts with Reclamation for use of excess storage capacity in Pueblo Reservoir, part of the federal FryingpanArkansas project. The contracts would include storage, conveyance, and exchange between Pueblo Reservoir and Reclamation reservoirs in the upper Arkansas River Basin of Colorado.

Purpose and Need for Action: The purpose of the SDS project is to provide a safe, reliable, and sustainable water supply for the Participants through the foreseeable future. The SDS project is needed by the Participants for the following reasons:

- The Participants have a need to use developed and undeveloped water supplies to meet most or all projected future demands through 2046.
- The Participants have a need to develop additional water storage, delivery, and treatment capacity to provide system redundancy.
- The Participants have a need to perfect and deliver the Participants' existing Arkansas River Basin water rights.

The purpose of the proposed Federal action is to authorize the use of Reclamation's Fryingpan-Arkansas project features and facilities for SDS project purposes. The proposed Federal action is needed for the following reasons:

- Pueblo Reservoir and its associated facilities are owned and operated by Reclamation.
- Storage and/or conveyance of non-federal and/or non-Fryingpan-Arkansas project water in federal project facilities must be authorized by Reclamation prior to their use. The proposed use would require contracts between the Participants and Reclamation.
- The contracts would authorize use of Fryingpan-Arkansas project features and facilities to store and convey non-Federal and/or non-project water. There is an opportunity to beneficially use unused existing storage capacity in Pueblo Reservoir to meet future water demand of the Participants.

Alternatives: The Draft EIS describes and analyzes the potential effects of seven alternatives:

- The No Action Alternative represents the most likely future water development project without Reclamation's proposed Federal action.
- The Proposed Action Alternative represents the Southern Delivery System project as the Participants propose to construct and operate it.

• The Wetland Alternative was developed to minimize disturbance to wetlands.

• The Arkansas River Alternative was developed to provide the highest minimum flow in the Arkansas River through Pueblo and to minimize water quality effects on the lower Arkansas River.

• The Fountain Creek Alternative was developed to minimize geomorphic and water quality effects on Fountain Creek by minimizing the use of Fountain Creek and its tributaries for receiving and conveying reusable return flows to the Arkansas River.

• The Downstream Intake Alternative would use an untreated water intake from the Arkansas River downstream of Fountain Creek and was developed to address public interest in an alternative location for diversion of water.

• The Highway 115 Alternative would convey untreated water through a pipeline that generally follows Colorado 115 between the Arkansas River and Colorado Springs and was developed to address public interest in an alternative pipeline location.

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

Dated: February 21, 2008.

Gary W. Campbell,

Deputy Regional Director, Great Plains Region.

[FR Doc. E8–3679 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Equus Beds Division of the Wichita Project; Wichita, KS

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Reclamation (Reclamation) proposes to prepare an EIS on the Equus Beds Aquifer Recharge and Recovery Component of the 'Integrated Local Water Supply Plan, Wichita, Kansas' (referred to as the 'Equus Beds Division'). The purpose of the Equus Beds Division is to provide a reliable supply of potable water to meet the maximum daily demand within the projected metropolitan area of Wichita, Kansas, through 2050 while protecting the Equus Beds aquifer's water quality. The proposed action would include the diversion of 100 million gallons per day (MGD) of above base flow water from the Little Arkansas River into the Equus Beds aquifer. The proposed action would involve adding a new point of diversion with a proposed new water right to be held by the City of Wichita.

DATES: A public scoping notice will be sent out to all interested parties to assist in identifying the significant environmental issues related to the proposed action. Written comments will be accepted through March 31, 2008.

ADDRESSES: Comments and requests to be added to the mailing list may be submitted to Bureau of Reclamation, Oklahoma-Texas Area Office, *Attention:* Charles Webster, Environmental Protection Specialist, 5924 NW 2nd Street, Suite 200, Oklahoma City, Oklahoma 73127–6514.

FOR FURTHER INFORMATION CONTACT: Charles Webster, Environmental Protection Specialist, Telephone: (405) 470–4831. TTY users may dial 711 to obtain a toll free TTY relay.

SUPPLEMENTARY INFORMATION: Reclamation has been authorized to assist in the funding of the Equus Beds Division under the authority of Public Law 109–299 (October 5, 2006). Public Law 109–299 states: ''The Secretary of the Interior may assist in the funding and implementation of the Equus Beds Aquifer Recharge and Recovery Component which is a part of the 'Integrated Local Water Supply Plan, Wichita, Kansas' (referred to in this section as the 'Equus Beds Division') * * * Before obligating funds for design or construction under this section, the Secretary of the Interior shall work cooperatively with the City of Wichita, Kansas, to use, to the extent possible, plans, designs, and engineering and environmental analyses that have already been prepared by the City for the Equus Beds Division. The Secretary of the Interior shall assure that such information is used consistent with applicable Federal laws and regulations.''

The City of Wichita has historically relied on the Equus Beds aquifer as a major source of water. In addition to the City, other agricultural and industrial users also depend on the aquifer. Over the years, this use has exceeded recharge and has resulted in a severe drop in the water table which has led to saltwater intrusion into the Equus Beds aquifer. The City of Wichita began using more surface water to meet water demands in an effort to slow the saltwater intrusion. While this change has slowed the saltwater intrusion into the Equus Beds aquifer, it has not completely stopped it and the water quality of the aquifer continues to be degraded. In an effort to recharge the aquifer to prevent further water quality degradation and provide a large volume of stored groundwater for future use during drought, the City of Wichita is developing the Equus Beds Aquifer Recharge and Recovery Component of the Integrated Local Water Supply Plan.

If you wish to comment, you may mail us your comments as indicated under the **ADDRESSES** section. Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 15, 2008.

Donald E. Moomaw,

Assistant Regional Director, Great Plains Region.

[FR Doc. E8–3530 Filed 2–28–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Pamela Monterosso, D.M.D.; Denial of Application

On February 6, 2006, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Pamela Monterosso, D.M.D., (Respondent) of New York, N.Y. The Show Cause Order proposed the denial of Respondent's pending application for a DEA Certificate of Registration as a practitioner on the ground that her ''registration would be inconsistent with the public interest.'' Show Cause Order at 1 (citing 21 U.S.C. 823(f)).

The Show Cause Order specifically alleged that Respondent had previously held a DEA registration at premises located in Washington, DC, which she surrendered for cause in November 1997. *Id.* According to the allegations, in September 1997, Respondent was

arrested for obtaining oxycodone, a schedule II controlled substance, by use of a fraudulent prescription, and admitted to investigators that she was abusing pharmaceutical controlled substances. *Id.* The Show Cause Order alleged that following her arrest, DEA investigators audited Respondent's handling of controlled substances and found that she could not ''produce proper records to account for the dispensing of these substances.'' *Id.* at 2. The Show Cause Order further alleged that on October 22, 1997, the United States Attorney for the District of Columbia filed an information which charged Respondent with obtaining a controlled substance by fraud, a violation of 21 U.S.C. 843(a)(3), and that Respondent subsequently pled guilty to the charge and was sentenced to two years probation. *Id.*

The Show Cause Order next alleged that in July 1998, Respondent entered into a Consent Order with the Maryland Board of Dental Examiners under which she was placed on probation for three years. *Id.* The Show Cause Order further alleged that in June 1999, the Maryland Board suspended Respondent's dental license for a period of twelve months. *Id.*

The Show Cause Order alleged that between September 1998 and March 1999, Respondent ''fraudulently obtained narcotics from Maryland pharmacies'' on six occasions. *Id.* The Show Cause Order alleged that Respondent was subsequently arrested for obtaining hydrocodone by fraud, and that in April 2000, Respondent was convicted following her guilty plea on one count of violating Maryland narcotics laws and was sentenced to twelve months probation. *Id.*

The Show Cause Order also alleged that in June 2004, Respondent failed to disclose her ''post-1997 drug abuse, arrest, and conviction'' to the New York State Board of Dentistry. *Id.* The Show Cause Order further alleged that Respondent committed a material falsification because she ''failed to disclose [her] 2000 criminal conviction'' on the DEA application that is at issue in this proceeding. *Id.*

Upon service of the Show Cause Order, Respondent, through her counsel, requested a hearing and submitted a letter responding to the allegations. The matter was assigned to Administrative Law Judge (ALJ) Mary Ellen Bittner who ordered the parties to file pre-hearing statements. While the Government timely filed its statement, Respondent did not meet its May 30, 2006 filing deadline. Accordingly, on July 13, 2006, the Government moved to terminate the proceeding and requested that the ALJ find that Respondent had waived her right to a hearing. Gov. Mot. for Summ. Disp. at 1–2.

Upon receipt of the Government's motion, the ALJ issued a memorandum offering Respondent the opportunity to respond by July 31, 2006. Order Terminating Proceeding at 1. Respondent failed to do so. On August 9, 2006, the ALJ found that Respondent had waived her right to a hearing, granted the Government's motion, and ordered that the proceeding be terminated. *Id.*

On June 6, 2007, the case file was forwarded to me for final agency action. Based on: (1) Respondent's failure to comply with the ALJ's Order to submit her pre-hearing statement, and (2) her failure to respond to the Government's motion for summary disposition, I adopt the ALJ's finding that Respondent has waived her right to a hearing. *See* 21 CFR 1301.43(d). I therefore issue this Decision and Final Order without a hearing based on relevant material in the investigative file and make the following findings.

Findings

On February 6, 2005, Respondent submitted an application for a DEA Certificate of Registration as a practitioner. On the application, Respondent was required to answer several questions including whether she had ''ever been convicted of a crime in connection with controlled substances under state or federal law?,'' and whether she had ''ever surrendered or had a federal controlled substance registration revoked, suspended, restricted or denied?'' Respondent answered ''yes'' to both of these questions.[1] Respondent offered the following explanation of her ''yes'' answers:

> [O]n December 14, 1997 I [pled] guilty to one count of Rx fraud in Washington D.C. under His Honor Judge Stanley Sporkin. I was suffering from post partum depression after the birth of my first & second child. I was told not to prescribe narcotics until my treatment was completed, and my diagnosis assured. * * * Full prescribing rights were given back to me. No state license was ever revoked [or] suspended. No problems have occurred since, and to the best of my knowledge the case was expunged exactly 7 years later in 2004.

Based on Respondent's affirmative answers to the two questions, her application was assigned to a Diversion Investigator (DI) for further investigation. During the course of her investigation, the DI determined that in December 1997, Respondent had pled guilty to one count of obtaining oxycodone by fraud, a violation of 21 U.S.C. 843(a)(3), in the U.S. District Court for the District of Columbia, and that she had also surrendered her DEA registration. Moreover, as a result of her conviction, in July 1998, the Maryland State Board of Dental Examiners entered into a consent order with Respondent which placed her on probation for a period of three years during which she was prohibited from prescribing controlled substances.

The DI also determined that a DEA investigation had found that on various dates between January 4, 1995, and August 28, 1997, Respondent had failed to document on order forms, the date and quantity of schedule II controlled substances (oxycodone) she had received. The same investigation also audited Respondent's handling of controlled substances and found that she was short 427 oxycodone tablets. As a result of this investigation, Respondent entered into a civil settlement with the Department of Justice and agreed to pay a civil penalty of $15,000.

The DI further determined that in early 1999, Respondent was arrested by officers of the Montgomery County, Maryland police department, and charged with six additional offenses under Maryland law related to controlled substances including obtaining hydrocodone by fraud and the unlawful possession of hydrocodone. While five of the six counts were dismissed, on April 6, 2000, Respondent pled guilty to the unlawful possession of a controlled substance for which she was fined and placed on probation. Respondent satisfactorily completed her probation and was granted probation before judgment.

In her request for a hearing, Respondent acknowledged that she ''did in fact obtain the schedule III controlled substance hydrocodone from a pharmacy in Montgomery County.'' Resp. Req. for Hearing at 1. Respondent asserts, however, that she ''return[ed] the pills to the pharmacist just 10 minutes later,'' but that the pharmacist nonetheless filed a police report which led to her arrest ''364 days later.'' *Id.*

Respondent contends that ''in the spring of 2000, in the Montgomery County Court, the case was ruled *nulle prosequi* * * * and was dropped.'' *Id.* Respondent further asserts that ''[w]e were advised by our legal counsel that a *nol-pros* decision meant that [the] arrest was thrown out and future disclosure of the event was neither

[1] On the application, Respondent was also asked whether she had ''ever surrendered or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation?'' Respondent answered ''no'' to this question.

appropriate nor necessary,'' and that she ''was told that this decision meant, in laymen's terms, 'that the arrest never happened.' '' *Id.*[2] Respondent further stated that she would submit the transcript from the proceeding to the Agency, *Id.*, but did not do so.

Discussion

Section 303(f) of the Controlled Substances Act provides that an application for a practitioner's registration may be denied upon a determination ''that the issuance of such registration would be inconsistent with the public interest.'' 21 U.S.C. 823(f). In making the public interest determination, the CSA requires the consideration of the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing * * * controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Id.

• ''These factors are considered in the disjunctive.'' *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). I ''may rely on any one or a combination of factors, and may give each factor the weight [I] deem[] appropriate in determining whether * * * an application for registration [should be] denied.'' *Id.* Moreover, I am ''not required to make findings as to all of the factors.'' *Hoxie* v. *DEA*, 419 F.3d 477, 482 (6th Cir. 2005); *see also Morall* v. *DEA*, 412 F.3d 165, 173–74 (D.C. Cir. 2005).

Furthermore, under Section 304(a)(1), a registration may be revoked or suspended ''upon a finding that the registrant * * * has materially falsified any application filed pursuant to or required by this subchapter.'' 21 U.S.C. 824(a)(1). Under agency precedent, the various grounds for revocation or suspension of an existing registration that Congress enumerated in section 304(a), 21 U.S.C. 824(a), are also properly considered in deciding whether to grant or deny an application under section 303. *See Anthony D. Funches*, 64 FR 14267, 14268 (1999); *Alan R. Schankman*, 63 FR 45260 (1998); *Kuen H. Chen*, 58 FR 65401, 65402 (1993). Thus, the allegation that Respondent materially falsified her application is properly considered in this proceeding, *see Samuel S. Jackson*, 72 FR 23848, 23852 (2007), and is, if proved, an adequate ground for denying her application.

On the Show Cause Order, the Government made two allegations that Respondent engaged in material falsification. First, it alleged that in June 2004, Respondent failed to disclose her ''post-1997 drug, abuse, arrest, and conviction'' when she ''appeared before the New York State Board of Dentistry * * * as an applicant for a license to practice dentistry.'' Show Cause Order at 2.

Respondent remains, however, licensed in good standing in the State of New York. Under these circumstances, the allegation that she failed to disclose to the New York Board of Dentistry the second arrest and conviction (and thus procured her dental license by fraudulent means) is a matter which should be resolved in the first instance by the State and not DEA. The allegation is therefore dismissed.

Respondent's statement on her DEA application is, however, properly before the Agency. Even accepting Respondent's statement that she was advised by her legal counsel that she was not required to disclose her arrest and plea, DEA has long taken the view that even when a court withholds adjudication and ultimately dismisses the charge after the completion of probation, the proceeding is still a conviction within the meaning of the Controlled Substances Act. *See Eric A. Baum, M.D.*, 53 FR 47272, 47274 (1988); *see also David A. Hoxie*, 69 FR 51477, 51478 (1994).

Moreover, the failure to disclose such a conviction constitutes a material falsification because it is ''capable of influencing'' the decision as to whether to grant an application. *See Kungys* v. *United States*, 485 U.S. 759, 770 (1988) (int. quotation and other citation omitted). As DEA has frequently noted, an applicant's answers to the various liability questions are material because the Agency ''relies upon such answers to determine whether an investigation is needed prior to granting the application.'' *Martha Hernandez, M.D.*, 62 FR 61145, 61146 (1997).

Respondent's failure to disclose the 2000 Maryland proceeding is material because the public interest inquiry under section 303(f) requires, *inter alia*, that the Agency examine her ''experience in dispensing * * * controlled substances,'' her ''conviction record * * * relating to the * * * dispensing of controlled substances,'' and her ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances.'' 21 U.S.C. 823(f). Respondent was therefore required to disclose the circumstances surrounding her subsequent arrest even if her conviction was expunged. Her failure to do so constitutes material falsification.

Furthermore, even crediting Respondent's statement that she was advised by counsel that she need not disclose the Maryland proceeding in the future, in her explanation she then proceeded to make an affirmative and material misrepresentation when she stated that ''[n]o problems have occurred since'' the 1997 federal proceeding. The statement was clearly false and Respondent had reason to know this to be so. I therefore conclude that Respondent knowingly made a material false statement in an attempt to obtain a favorable decision from the Agency on Respondent's application and that granting Respondent a new registration ''would be inconsistent with the public interest.'' 21 U.S.C. 823(f); *see also e.g., Dan E. Hale*, 69 FR 69402 (2004).

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f), as well as 28 CFR 0.100(b) & 0.104, I order that the application Pamela Monterosso, D.M.D., for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective March 31, 2008.

Dated: February 15, 2008.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E8–3873 Filed 2–28–08; 8:45 am]

BILLING CODE 4410–09–P

[2] Respondent also contended that while in June 1999, the Maryland Board ''did indeed suspend her dental license for 12 months, [the suspension] was also stayed immediately.'' Respondent's Req. for Hearing at 1. The record contains, however, a copy of a June 2, 1999 consent order under which Respondent voluntarily agreed not to practice dentistry for a period of twelve months. This order contains no indication that it was stayed. The Show Cause Order did not, however, allege either that Respondent's ''no'' answer to the liability question regarding whether her state license had been the subject of discipline or her statement that ''[n]o state license was ever revoked and/or suspended'' was materially false. I therefore do not consider whether either of these statements is grounds for the denial of her application.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation

of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on January 28, 2008, Meridian Medical Technologies, 2555 Hermelin Drive, St. Louis, Missouri 63144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Morphine (9300), a basic class of controlled substance listed in schedule II.

The company plans to import products for research experimentation or clinical use and analytical testing.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than March 31, 2008.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–3858 Filed 2–28–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on January 14, 2008, Supernus Pharmaceuticals, 1550 East Gude Drive, Rockville, Maryland 20850, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Oxycodone (9143)	II
Morphine (9300)	II

The company plans to import controlled substances for clinical trials and analytical testing.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA. 22152; and must be filed no later than March 31, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 20, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–3874 Filed 2–28–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 23, 2008, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Coca Leaves (9040)	II
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152, and must be filed no later than April 29, 2008.

Dated: February 20, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–3875 Filed 2–28–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Federal Bureau Of Prisons

Notice of the Availability of the Draft Environmental Assessment for the Proposed Federal Correctional Institution—Hazelton, WV

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Public Comment on Draft Environmental Assessment.

SUMMARY: The U.S. Department of Justice, Federal Bureau of Prisons (BOP) announces the availability of the Draft Environmental Assessment (EA) for the proposed development of a Federal Correctional Institution (FCI) to be located in Hazelton, Preston County, West Virginia.

The BOP is seeking to expand the facilities that currently exist at BOP's USP Hazelton facility due to a growing population of federal inmates and an increased demand in the Mid-Atlantic Region for facilities to house the growing inmate population.

Background Information

Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and the Council of Environmental Quality Regulations (40 CFR parts 1500–1508), BOP has prepared a Draft Environmental Assessment (EA) for a medium-security FCI to house approximately 1,200 adult male inmates in Hazelton, West Virginia.

USP Hazelton occupies 915 acres and is currently comprised of a high-security penitentiary housing approximately 1,608 male inmates, a Secured Female Facility (SFF) housing approximately 623 female inmates and a Federal Prison Camp (FPC) housing approximately 124 low-security inmates. Environmental studies were conducted before the construction of the USP Hazelton and the FPC in 1999, and the SFF in 2000. It is the intent of the BOP to construct the FCI on a portion of the existing 915 acres currently owned by BOP.

Project Information

The proposed action in Hazelton, West Virginia, is part of the BOP's comprehensive expansion effort to accommodate an increasing federal inmate population and reduce system-wide inmate crowding. The proposed action would consist of construction and operation of a medium-security FCI at the existing USP Hazelton facility. The principal function of the correctional facility would be to provide a safe, secure and humane environment for the care and custody of federal inmates, primarily from the Mid-Atlantic region of the country. Upon activation, the facility would have a staff of approximately 250 full-time employees who would provide 24-hour supervision. Development of the proposed facility will occur on 250 acres of the 915 acres comprising the existing USP Hazelton facilities. An Environmental Impact Statement (EIS) was prepared for the original development of the 915-acre site in 1999 and additional environmental studies were prepared for further development of the site in 2000. The current EA is being undertaken to evaluate current environmental, cultural and socioeconomic resources and potential impacts of the proposed FCI. The previous NEPA documents included the area currently being evaluated in this EA.

Notice of Availability of the Draft Environmental Assessment

The BOP evaluated alternatives as part of the Draft EA including the No Action Alternative and development of three alternative placements of the facility on the proposed site. Each of the alternatives located on the 250-acre site in Hazelton, West Virginia, was evaluated in the Draft EA, with the development of Option C being identified by the Draft EA as the Preferred Alternative.

The Draft EA will be the subject of a 30-day review period which begins February 29, 2008 and ends March 30, 2008. Comments concerning the Draft EA and the proposed action must be received during this time to be assured of consideration. All written comments received during this review period will be taken into consideration by the BOP.

Copies of the Draft EA are available for public viewing at:

Preston County Courthouse, 101 West Main Street, Room 101, Kingwood, WV 26537.

Kingwood Public Library, 205 West Main Street, Kingwood, WV 26537.

Terra Alta Public Library, 701B East State Avenue, Terra Alta, WV 26764.

The Draft EA and other information regarding this project are available upon request. To request a copy of the Draft EA, please contact:

Pamela J. Chandler, Chief, or Issac J. Gaston, Site Selection Specialist, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534 *Tel:* 202–514–6470, *Fax:* 202–616–6024 / *E-mail: pchandler@bop.gov or igaston@bop.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela J. Chandler, or Issac J. Gaston, Federal Bureau of Prisons.

Dated: February 22, 2008.

Issac J. Gaston,

Site Specialist, Site Selection and Environmental Review Branch.

[FR Doc. E8–3680 Filed 2–28–08; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,276]

F.L. Smithe Machine Company Duncansville, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By applications dated January 16, 2008 and January 19, 2008, the International Association of Machinists and Aerospace Workers and a company official, respectively, requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The denial notice was signed on December 28, 2007 and published in the **Federal Register** on January 16, 2008 (73 FR 2944).

The initial investigation resulted in a negative determination based on the finding that imports of envelope making machines, printing presses and related parts did not contribute importantly to worker separations at the subject firms and no shift of production to a foreign source occurred.

In the request for reconsideration, both petitioners indicated that not enough information was supplied pertaining to printing press machines manufactured at the subject plant.

The Department has carefully reviewed the requests for reconsideration and the existing record and determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the applications, I conclude that the claim is of sufficient weight to justify

reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 21st day of February, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–3795 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,168]

Joan Fabrics Corporation, Including Workers Whose Wages Were Paid by Accuforce Staffing Agency and Valdese Weavers LLC, Siler City, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1074 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 25, 2006, applicable to workers of Joan Fabrics Corporation, Siler City, North Carolina. The notice was published in the **Federal Register** on May 11, 2006 (71 FR 27519). The certification was amended on July 26, 2007 to include workers whose wages were paid by AccuForce Staffing Service. The notice as published in the **Federal Register** on August 2, 2007 (72 FR 42432).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of upholstery, wall panel and tie lining fabrics.

New information shows that following a corporate decision, workers of the Siler City, North Carolina location of the subject firm will have their wages reported under a separated unemployment insurance (UI) tax account for Valdese Weavers LLC between November 12, 2007 and February 29, 2008.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Joan Fabrics Corporation, Siler City, North Carolina who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–59,168 is hereby issued as follows:

All workers of Joan Fabrics Corporation, including workers whose wages were paid by AccuForce Staffing Agency and Valdese Weavers LLC, Siler City, North Carolina, who became totally or partially separated from employment on or after April 5, 2005, through April 25, 2008, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of February, 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–3794 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of February 11 through February 15, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed

importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,309; Kohler Company, Kohler, WI: October 12, 2006.TA–W–62,638; Thomasville Furniture Industries, Corporate Office, Thomasville, NC: December 30, 2007.

TA–W–62,722; Benson Manufacturing, Inc., Benson International, Mineral Wells, WV: January 3, 2007.

TA–W–62,744; The Epitech Group, Inc., Working of Site at Ford Motor Co., Product Development and Engineering, Dearborn, MI: January 15, 2007.

TA–W–62,745; Fourth Generation Services, Inc., Working On-Site at Ford Motor Company, Dearborn, MI: January 15, 2007.

TA–W–62,767; Masterbrand Cabinets, Crossville, TN: January 29, 2007.

TA–W–62,785; Sappi Fine Paper, North America—Allentown Division, Allentown, PA: February 1, 2007.

TA–W–62,522; Tifton Aluminum, A Subsidiary of Alcoa, Inc., Tifton, GA: November 29, 2006.

TA–W–62,671; Melvin Quilting Company, Rocky Mount, NC: January 11, 2007.

TA–W–62,708; USR Optonix, Inc., A Subsidiary of Kasel Optonix Ltd. Japan, Washington, NJ: January 16, 2007.

TA–W–62,710; Mahle Engine Components USA, Formerly Dana Glacier Vandervell, Caldwell, OH: July 9, 2007.

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,617; Advanced Fiber Technologies Finebar, Formerly Known as Norwalk Industrial, Advanced Fiber Tech, Manchester, CT: December 28, 2006.

TA–W–62,662; Pentair Electronic Packaging, PEP—IL Division, Des Plaines, IL: January 9, 2007.

TA–W–62,705; Faurecia Exhaust Systems, A Subsidiary of Faurecia, Troy, OH: January 11, 2007.

TA–W–62,707; General Cable Corporation, Datacomm Division, Jackson, TN: January 14, 2007.

TA–W–62,735; GKN Driveline North America, Inc., A Subsidiary of GKN PLC, Sanford, NC: February 15, 2008.

TA–W–62,760; Delphi Corporation, Electronics and Safety Division, Kokomo, IN: January 28, 2007.

TA–W–62,794; Franklin Electric Company, Siloam Springs, AR: January 28, 2008.

TA–W–62,803; Albany International Group, Forming Fabrics Division, Montgomery, AL: February 1, 2007.

TA–W–62,622; Thomson Healthcare, Quality Assurance Department, Information Technology Department, Denver, CO: December 18, 2006.

TA–W–62,647; Honeywell, Inc., CPG Division, Greenville, OH: January 8, 2007.

TA–W–62,650; Crane Plumbing, LLC, Vitreous China Plant, Subsidiary of Sun Capital Holding, Hondo, TX: December 13, 2006.

TA–W–62,672; Emcore Corporation, Naperville, IL: January 7, 2007.

TA–W–62,786; Springs Global US, Inc., Springs Direct Division, Corporate Support Group, Lancaster, SC: January 31, 2007.

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,658; Milwaukee Electric Tool Corporation, Jackson Plant, Jackson, MS: January 9, 2007.

TA–W–62,397; Clariant Corporation, Textiles, Leather and Paper Division, Martin, SC: November 1, 2006.

TA–W–62,397A; Clariant Corporation, Corporate Office, Charlotte, NC: November 1, 2006.

TA–W–62,602; Runnerless Knits, Inc., Sunbury, PA: December 20, 2006.

TA–W–62,623; Parkdale Mills, Inc., Plant #38, Rockford, AL: December 10, 2006.

TA–W–62,781; Dillan Chenille, Inc., Martinsville, VA: January 29, 2007.

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

None..

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–62,673; Siemens E & A, Inc., Urbana, OH.

TA–W–62,713; NGT Controls, Irvine, CA.

TA–W–62,771; Parlex U.S.A., Laminated Cable Division, Methuen, MA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,660; InterfaceFABRIC, Elkin, NC.

TA–W–62,711; Carrollton Specialty Products, Carrollton, MO.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,641; Hitachi Storage Technologies, Inc., San Jose, CA.

TA–W–62,653; RF Micro Devices, Signal Source and Amplifier Division, Broomfield, CO.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–62,773; Computer Sciences Corporation, Global Infrastructure Services Group (GIS), San Diego, CA.

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None

I hereby certify that the aforementioned determinations were issued during the period of February 11 through February 15, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Date: February 21, 2008.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–3793 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 10, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 10, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of February 2008.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 2/11/08 AND 2/15/08

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62822	Rock-Tenn Company (Comp)	Chicopee, MA	02/11/08	02/11/08
62823	Sandpiper Knitting, Inc. (Comp)	Pageland, SC	02/11/08	02/08/08
62824	Jewel America, Inc. (Wkrs)	New York, NY	02/11/08	02/09/08
62825	Smart Parts, Inc. (Comp)	Latrobe, PA	02/11/08	02/09/08
62826	Sights Denim System (State)	Henderson, KY	02/11/08	02/11/08
62827	Peak Medical, Inc. (Wkrs)	Hillsborough, NC	02/11/08	02/07/08
62828	JMS Converters (54914)	Appleton, WI	02/12/08	01/28/08
62829	Minco Manufacturing, LLC (Comp)	Colorado Springs, CO	02/12/08	02/07/08
62830	Prestige Fabricators, Inc. (Plants #1, #2, and #3) (Comp)	Asheboro, NC	02/12/08	02/11/08
62831	Gaming Partners International Corporation (Comp)	Las Vegas, NV	02/12/08	02/08/08
62832	GAF Corporation (IAMAW)	Quakertown, PA	02/12/08	01/25/08
62833	MegTec Systems (AFL–CIO)	DePere, WI	02/12/08	02/11/08
62834	Diamond Electric Manufacturing (State)	Dundee, MI	02/12/08	02/11/08
62835	Panasonic Shikoju Electronics Corp. of America (Comp)	Vancouver, WA	02/12/08	02/11/08
62836	A.T. Cross Company (Comp)	Lincoln, RI	02/12/08	02/12/08
62837	Pentair Water (IAMAW)	Ashland, OH	02/12/08	01/29/08
62838	Delphi Corporation (UAW)	Athens, AL	02/13/08	02/11/08
62839	Inverness Corporation (Wkrs)	Fairlawn, NJ	02/13/08	02/02/08

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 2/11/08 AND 2/15/08—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62840	Superior Studs (Comp)	Glide, OR	02/13/08	01/14/08
62841	Rock of Ages Corp. (Comp)	Graniteville, VT	02/13/08	01/17/08
62842	Norton Lumber Co., Inc. (Comp)	White City, OR	02/13/08	02/12/08
62843	Dematic Corporation (UAW)	Grand Rapids, MI	02/13/08	02/08/08
62844	St. George Crystal, Ltd. (Comp)	Jeannette, PA	02/13/08	02/12/08
62845	Durham Manufacturing Co., Inc. (State)	Durham, CT	02/14/08	02/13/08
62846	Baldwin Piano, Inc. (State)	Trumann, AR	02/14/08	02/13/08
62847	Columbia University (Wkrs)	New York, NY	02/14/08	02/07/08
62848	Android Industries (Wkrs)	Springfield, OH	02/14/08	01/30/08
62849	Newpage Corporation (State)	Stamford, CT	02/14/08	02/13/08
62850	Magnesium Aluminum Corporation (Comp)	Cleveland, OH	02/14/08	02/13/08
62851	Auto Truck Transport (Wkrs)	Mt. Holly, NC	02/14/08	02/11/08
62852	FCI USA, Inc. (Comp)	Mt. Union, PA	02/14/08	02/14/08
62853	Irving Forest Products (Union)	Ashland, ME	02/15/08	01/28/08
62854	US Security Associates, Inc. (State)	Springfield, MO	02/15/08	01/25/08
62855	WestPoint Home New York Sales Offices (Comp)	New York, NY	02/15/08	02/14/08
62856	Honeywell Process Solutions (Comp)	Phoenix, AZ	02/15/08	02/13/08
62857	Circuit Images, Inc. (Wkrs)	Boulder, CO	02/15/08	02/14/08
62858	Household Utilities Inc. (HUI) (Wkrs)	Kiel, WI	02/15/08	02/13/08

[FR Doc. E8–3792 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 10, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 10, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of February 2008.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 2/4/08 AND 2/8/08

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62793	J.H.L. Fashion, Inc. (Comp)	New York, NY	02/04/08	01/31/08
62794	Franklin Electric Company (State)	Siloam Springs, AR	02/04/08	02/04/08
62795	McNeil-PPC, Inc. (Comp)	Lititz, PA	02/04/08	02/01/08
62796	Manosh-Hardwoods, LLC (Comp)	Morrisville, VT	02/04/08	01/23/08
62797	Andin International, Inc. (Wkrs)	New York, NY	02/04/08	02/02/08
62798	TAC Automotive Group/Bartech Group (Wkrs)	Oak Creek, WI	02/04/08	01/16/08
62799	Cooper Power Systems (State)	Greenwood, SC	02/05/08	02/04/08
62800	Wilkins, Kaiser and Olsen, Inc. (Comp)	Carson, WA	02/05/08	01/31/08
62801	Taylor-Made/ Division of Adidas (State)	West Minister, SC	02/05/08	01/25/08
62802	Shorewood Packaging (State)	Edison, NJ	02/05/08	02/04/08
62803	Albany International Forming Fabrics (Comp)	Montgomery, AL	02/05/08	02/01/08
62804	Hp Pelzer Automotive Systems (Comp)	Thomson, GA	02/06/08	01/09/08
62805	American Standard Building Systems (Wkrs)	Martinsville, VA	02/06/08	02/05/08
62806	Ametek, Measurement and Calibration Technologies (Comp).	Bartow, FL	02/06/08	01/31/08
62807	Magna Donnelly Engineered Glass (State)	Holland, MI	02/06/08	02/05/06
62808	Brunswick Bowling and Billiard Corporation (State)	Muskegon, MI	02/07/08	02/06/08
62809	Edwards Vacuum, Inc. (State)	Wilmington, MA	02/07/08	02/04/08
62810	BioTech Industries, LLC (Comp)	Newton, NC	02/07/08	02/06/08
62811	Standhardt Chemical Corporation (Wkrs)	Grand Rapids, MI	02/07/08	02/06/08

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 2/4/08 AND 2/8/08—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
62812	TTX Company (State)	Chicago, IL	02/07/08	02/05/08
62813	The Hershey Company (Union)	Oakdale, CA	02/08/08	02/06/08
62814	Tricon Industries, Inc. (Comp)	Downers Grove, IL	02/08/08	02/07/08
62815	R and G Mold and Engineering, Inc. (Comp)	Grandville, MI	02/08/08	01/31/08
62816	FMC Corporation (Comp)	Baltimore, MD	02/08/08	02/07/08
62817	Lincoln Brass Works (AFLCIO)	Waynesboro, TN	02/08/08	02/06/08
62818	Newpage Corporation (Comp)	Chillicothe, OH	02/08/08	02/07/08
62819	Robert Half Management Resources (State)	Southfield, MI	02/08/08	02/06/08
62820	Huntsman International, LLC/Textile Effects Div. (Wkrs)	High Point, NC	02/08/08	02/05/08
62821	Ameridrives International Coupling Products (Wkrs)	Erie, PA	02/08/08	02/06/08

[FR Doc. E8–3791 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,724]

Keola Precision Technologies Fremont, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 23, 2008, in response to a worker petition filed the One Stop Career Center on behalf of workers at Keola Precision Technologies, Fremont, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of February, 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–3797 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,516]

Northern Machine Tool Company Muskegon, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 30, 2007, in response to a petition filed by a company official on behalf of workers of Northern Machine Tool Company, Muskegon, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of February, 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–3796 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,855]

Westpoint Home, New York Sales Offices, New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 14, 2008 in response to a worker petition filed by a company official, on behalf of workers of WestPoint Home, New York Sales Offices, New York, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of February 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–3790 Filed 2–28–08; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 08–03]

Notice of the March 11, 2008 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 10 a.m. to 12 p.m., Tuesday, March 11, 2008.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Suzi M. Morris via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to discuss and consider selection issues that were deferred from its December 12, 2007 meeting; implementation issues affecting a number of MCC's compact countries; and certain administrative matters.

The agenda items are expected to involve the discussion of classified information and the meeting will be closed to the public.

Dated: February 27, 2008.

William G. Anderson, Jr.,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 08–921 Filed 2–27–08; 2:10 pm]

BILLING CODE 9211–03–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–018 and 52–019]

Duke Energy; Acceptance for Docketing of an Application for a Combined License for William States Lee III Units 1 and 2

By letter dated December 12, 2007, as supplemented by a letter dated January 28, 2008, two letters dated February 6, 2008, and a letter dated February 8, 2008, Duke Energy submitted its application to the U.S. Nuclear Regulatory Commission (NRC) for a combined license (COL) for two AP1000 advanced passive pressurized water reactors in accordance with the requirements contained in 10 CFR 52, ''Licenses, Certifications and Approvals for Nuclear Power Plants.'' These reactors will be identified as William States Lee III Units 1 and 2 and are to be located in Cherokee County, South Carolina. A notice of receipt and availability of this application was previously published in the **Federal Register** (73 FR 6218) on February 1, 2008.

The NRC staff has determined that Duke Energy has submitted information in accordance with 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR part 52 that is acceptable for docketing. The Docket Numbers established for Units 1 and 2 are 52–018, and 52–019, respectively.

The NRC staff will perform a detailed technical review of the application. Docketing of the application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L, ''Informal Hearing Procedures for NRC Adjudications,'' of 10 CFR part 2 and will receive a report on the COL application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87, ''Referral to the Advisory Committee on Reactor Safeguards (ACRS).'' If the Commission finds that the COL application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce in a future **Federal Register** notice the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 52.85.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 25th day of February 2008.

For the Nuclear Regulatory Commission.

Joelle L. Starefos,

Senior Project Manager, AP1000 Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–3952 Filed 2–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–020]

AREVA NP, Inc.; Acceptance for Docketing of an Application for Standard Design Certification of the U.S. EPR

By letter dated December 11, 2007, as supplemented by letters dated February 7, 2008 and February 20, 2008, AREVA NP Inc. (AREVA) submitted an application to the Nuclear Regulatory Commission (NRC, the Commission) for a standard design certification of the U.S. Evolutionary Power Reactor (EPR). The application was submitted pursuant to section 103 of the Atomic Energy Act and Subpart B, ''Standard Design Certifications,'' of Title 10 of the Code of Federal Regulations (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' A notice of receipt and availability of this application was previously published in the **Federal Register** (73 FR 2286) on January 14, 2008.

The NRC staff has determined that AREVA has submitted information in accordance with 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR Part 52 and that the application is acceptable for docketing. The docket number established for this application is 52–020.

The NRC staff will perform a detailed technical review of the design certification application. Docketing of the design certification application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The NRC staff anticipates that a notice relating to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The U.S. EPR design is an approximately 1600 megawatt electric evolutionary pressurized water reactor (PWR). The primary system design, loop configuration, and main components design are similar to those of currently operating PWRs. The U.S. EPR contains unique design features, such as four redundant trains of emergency core cooling; Containment and Shield Building; and a core melt retention system for severe accident mitigation. The U.S. EPR application includes the entire power generation complex, except those elements and features considered site-specific.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/design-cert.html.*

Dated at Rockville, Maryland this 25th day of February 2008.

For the Nuclear Regulatory Commission.

Getachew Tesfaye,

Sr. Project Manager, EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–3918 Filed 2–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 030–05215 and 040–06377]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendments to Byproduct Materials License No. 29–00047–02 and Source Materials License No. SUB–348, for Amendment of the License and Unrestricted Release of the Department of the Army Facilities in Picatinny Arsenal, New Jersey

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road; telephone (610) 337–5040; fax number (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of license amendments to Byproduct Materials License No. 29–00047–02 and Source Materials License No. SUB–348. These licenses are held by the Department of the Army, U.S. Army Research, Development and Engineering Command (RDEC), Armament Research, Development and Engineering Center (ARDEC) (the Licensee), for its facilities located at the Picatinny Arsenal in New Jersey. Issuance of the amendment would authorize release of Building 167, Magazine 3018, and Bunker 3030 for unrestricted use. The Licensee requested these actions in a letter dated April 28, 2006. The NRC has prepared an Environmental Assessment (EA) in support of the proposed actions in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed actions. The amendments will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's April 28, 2006, license amendment requests, resulting in release of Building 167, Magazine 3018 and Bunker 3030 for unrestricted use. License No. 29–00047–02 was issued on August 22, 1956, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed and sealed byproduct materials for purposes of conducting research and development activities at its Picatinny Arsenal. License No. SUB–348 was issued on July 13, 1961, pursuant to 10 CFR part 40, and has been amended periodically since that time. This license authorized the Licensee to use uranium and thorium in any form for purposes of conducting research and development activities at its Picatinny Arsenal.

The Picatinny Arsenal is situated on 6,500 acres and consists of residential, industrial, office space, laboratories, and specialized facilities. The Picatinny Arsenal is located in a mixed residential and commercial area. Building 167, Magazine 3018, and Bunker 3030 are three of several facilities where use of licensed materials was performed under the authority of RDEC/ARDEC, one of the military tenants at Picatinny Arsenal. Building 167 was a one-story building containing approximately 1,800 square-feet of radioactive materials laboratories and storage areas on the first floor. Radioactive materials were also stored in the basement. Areas outside Building 167 included in the decommissioning activities were a 2 meter by 3 meter area of localized contamination and an 800 square meter area across the street from Building 167 that was used for radioactive waste storage. Magazine 3018 was an explosives magazine in which radiolabelled explosives were stored. Bunker 3030 was a bunker that was once used to store radioactive munitions and was also used for radioactive waste storage.

In the late 1990s, the Licensee determined that Building 167, Magazine 3018, and Bunker 3030 were no longer required for licensed activities and initiated a survey and decontamination program. Based on the Licensee's historical knowledge of the site and the conditions of these facilities, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of Building 167, Magazine 3018, and Bunker 3030 and provided information to the NRC to demonstrate that they meet the criteria in subpart E of 10 CFR part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities in Building 167, Magazine 3018, and Bunker 3030 and seeks the unrestricted use of these buildings.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted in Building 167, Magazine 3018, and Bunker 3030 shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3, carbon-14, strontium-90, cesium-137, uranium, thorium, radium, and other similar radionuclides. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas affected by these radionuclides.

The Licensee conducted final status surveys during October and November 2001 and June 2002. The surveys covered Building 167 and its associated outdoor areas, Magazine 3018, and Bunker 3030. The final status survey report was attached to the Licensee's amendment request dated April 28, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by developing derived concentration guideline levels (DCGLs) for its facilities. The Licensee conducted site-specific dose modeling using the default input parameters in RESRAD-BUILD 3.3 for a residential building scenario, and RESRAD 6.3 for soil used by a residential farmer, and performed sensitivity analyses which demonstrate that the proposed DCGLs are conservative estimations of the potential dose at the site and will not exceed the Department of the Army's self-imposed constraint of 15 millirem in a year. The Licensee thus determined the maximum amount of residual radioactivity on building surfaces, equipment, materials, and soils that will satisfy the NRC

requirements in subpart E of 10 CFR part 20 for unrestricted release. The NRC reviewed the Licensee's methodology and the DCGLs, and has concluded that the proposed DCGLs are acceptable for use as release criteria for Building 167, Magazine 3018, and Bunker 3030. The Licensee's final status survey results were below these DCGLs, and are thus acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at Building 167, Magazine 3018, and Bunker 3030. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding these facilities. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of these facilities for unrestricted use and is in compliance with 10 CFR 20.1402 including the impact of residual radioactivity at previously-released site locations of use. Although the Licensee will continue to perform licensed activities at other parts of its Picatinny Arsenal, the Licensee must ensure that these decommissioned areas do not become recontaminated. Before the license can be terminated, the Licensee will be required to show that all previously-released areas comply with the radiological criteria in 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity in Building 167, Magazine 3018, and Bunker 3030 and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d) and 10 CFR 40.42(d), requiring that decommissioning of byproduct material and source material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Building 167, Magazine 3018, and Bunker 3030 meet the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of New Jersey Department of Environmental Protection (NJDEP) for review on January 2, 2008. On January 31, 2008, NJDEP responded by letter. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Letter dated April 28, 2006 [ML061290093];

2. New World Technology, Final Report, Picatinny Arsenal Radiological Remediation/Release Surveys and Sampling Project, Revision 3, January 30, 2006, Project No. USA 99–109 [ML061510185 and ML062840673];

3. Letter dated October 12, 2006 [ML062900446];

4. Letter dated September 26, 2007 [ML072770684];

5. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

6. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''

7. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;'' and

8. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 21st day of February 2008.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety Region I.

[FR Doc. E8–3920 Filed 2–28–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–08–024]

In the Matter of: Licensees Authorized To Possess Radioactive Material Quantities of Concern; Order Imposing Fingerprinting and Criminal History Records Check Requirements for Unescorted Access to Certain Radioactive Material (Effective Immediately)

I

The Licensees identified in Attachment 1 [1] to this Order hold licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission), authorizing them to possess items containing radioactive materials in quantities of concern. These materials and the quantities of concern are identified in Attachment 2 to this Order. Section 652 of the Energy Policy Act of 2005 (EPAct), which became law on August 8, 2005, amended section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check for ''any individual who is permitted unescorted access to radioactive materials or other property subject to regulation by the Commission that the Commission determines to be of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks.'' Section 149 of the AEA also requires that ''all fingerprints obtained by a licensee or applicant * * * shall be submitted to the Attorney General of the United States through the Commission for identification and a criminal history records check.'' NRC has decided to implement this requirement, prior to the completion of a future rulemaking, which will implement these provisions of the EPAct, because a deliberate malevolent act by an individual with unescorted access to these radioactive materials has the potential to result in significant adverse impacts to the public health and safety. Individuals or classes of individual listed in 10 CFR 73.61 (72 FR 4945 (February 2, 2007)) are relieved from the fingerprinting and FBI identification and criminal history records check requirements of section 149. Individuals listed in Attachment 3, Paragraph 3 have already satisfied the requirements of section 149 of the AEA and therefore do not need to take additional action. Therefore, as set forth in this Order and in accordance with section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for unescorted access to certain radioactive material.

II

Subsequent to the terrorist events of September 11, 2001, the NRC issued the Increased Controls (IC) Orders (EA–05–090) [2] to certain Licensees (IC Licensees, Licensees) who are authorized to possess radioactive material in quantities of concern. These Orders increased the Licensees' control over their sources in order to prevent unintended radiation exposure and malicious acts. One specific requirement imposed by the IC Orders required Licensees to conduct background checks to determine the trustworthiness and reliability of individuals needing unescorted access to radioactive materials. ''Access'' to these radioactive materials means that an individual could exercise some physical control over the material or devices containing the material. Prior to the enactment of the EPAct, the NRC did not have the authority, except in the case of power reactor Licensees, to require Licensees to submit fingerprints for FBI identification and criminal history records checks of individuals being considered for unescorted access to radioactive materials subject to NRC regulations. The Commission has determined that radioactive materials possessed by IC Licensees are considered of such significance to the public health and safety as to warrant fingerprinting and FBI identification and criminal history records checks for such persons. Therefore, in accordance with section 149 of the AEA, as amended by the EPAct, the Commission is imposing the fingerprinting and FBI identification and criminal history records check requirements, as set forth in this Order, including those requirements identified in Attachment 3 to this Order on all IC Licensees identified in Attachment 1 to this Order, which are currently authorized to possess radioactive materials in quantities of concern. These requirements will remain in effect until the Commission determines otherwise.

In addition, pursuant to 10 CFR 2.202, because of the potentially significant adverse impacts associated with a deliberate malevolent act by an individual with unescorted access to radioactive materials quantities of concern, I find that the public health and safety require that this Order be effective immediately.

III

Accordingly, pursuant to sections 81, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR parts 30 and 33, *it is hereby ordered, effective immediately, that all licensees identified in attachment 1 to this order shall comply with the requirements of this order as follows:*

A. 1. The Licensee shall, within ninety (90) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 3 of this Order for individuals that require unescorted access to certain radioactive materials.

2. Within ninety (90) days of the date of this Order, the Licensee shall provide under oath or affirmation, a certification that the Trustworthiness and Reliability (T&R) Official (an individual with the responsibility to determine the trustworthiness and reliability of another individual requiring unescorted access to the radioactive materials identified in Attachment 2) is deemed trustworthy and reliable by the Licensee as required in paragraph B.2 of this Order.

3. The Licensee shall, in writing, within sixty (60) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in this Order or in Attachment 3 to this Order, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or its license. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

4. The Licensee shall complete implementation of the program established in accordance with paragraph A.1 of this Order by August 19, 2008. In addition to the notifications in paragraphs 2 and 3 above, the Licensee shall notify the Commission within twenty-five (25) days after they have achieved full compliance with the requirements described in Attachment 3 to this Order. If by August 19, 2008, the Licensee is unable, due to circumstances beyond its control, to complete implementation of this Order, the Licensee shall submit a written

[1] Attachment 1 contains sensitive information and will not be released to the public.

[2] Subsequently, the IC Order requirements were imposed through license condition on new or amended NRC licenses authorizing the possession of radioactive materials in quantities of concern as identified in Attachment 2 to this Order.

request to the Commission explaining the need for an extension of time to implement the requirements. The request shall provide the Licensee's justification for seeking more time to comply with the requirements of this Order.

5. Licensees shall notify the NRC's Headquarters Operations Office at 301–816–5100 within 24 hours if the results from a FBI identification and criminal history records check indicate that an individual is identified on the FBI's Terrorist Screening Data Base.

B. 1. Except as provided in paragraph E for individuals who are currently approved for unescorted access, the Licensee shall grant access to radioactive material in Attachment 2 in accordance with the requirements of IC.1. of the Increased Controls Order (EA–05–090) and the requirements of this Order.

2. The T&R Official, if he/she does not require unescorted access, must be deemed trustworthy and reliable by the Licensee in accordance with the requirements of IC.1. of the Increased Controls Order (EA–05–090) before making a determination regarding the trustworthiness and reliability of another individual. If the T&R Official requires unescorted access, the Licensee must consider the results of fingerprinting and the review of an FBI identification and criminal history records check as a component in approving a T&R Official.

C. Prior to requesting fingerprints from any individual, the Licensee shall provide a copy of this Order to that person.

D. Upon receipt of the results of FBI identification and criminal history records checks, the Licensee shall control such information as specified in the ''Protection of Information'' section of Attachment 3 of this Order and in requirement IC.5 of the Increased Controls Order (EA–05–090).

E. The Licensee shall make determinations on continued unescorted access for persons currently granted unescorted access, by August 19, 2008, based upon the results of the fingerprinting and FBI identification and criminal history records check. The Licensee may allow any individual who currently has unescorted access to certain radioactive materials in accordance with the IC Order to continue to have unescorted access, pending a decision by the T&R Official. After August 19, 2008, no individual may have unescorted access to radioactive materials without a determination by the T&R Official (based upon fingerprinting, an FBI identification and criminal history records check and a previous trustworthiness and reliability determination) that the individual may have unescorted access to such materials.

F. 1. The Licensee shall comply with and to the extent the recipient of this Order is also the recipient of the Increased Controls Order (EA–05–090), paragraph IC 1.b is superceded by the following:

> For individuals employed by the licensee for three years or less, and for non-licensee personnel, such as physicians, physicists, house-keeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, personal references, and fingerprinting and the review of an FBI identification and criminal history records check. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the employee (i.e. seeking references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee and fingerprinting and an FBI identification and criminal history records check.

2. The Licensee shall comply with and to the extent the recipient of this Order is also the recipient of Increased Controls Order (EA–05–090), Paragraph IC 1.c of that prior Order is superceded by, the following:

> Service provider licensee employees shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the licensee providing the service.

3. For Licensees who have previously received the Increased Controls Order (EA–05–090), ''Table 1: Radionuclides of Concern'' is superseded by Attachment 2 to include Ra–226. The previous Increased Controls Order (EA–05–090) will, therefore, also apply to Ra–226 as noted in Attachment 2.

Licensee responses to A.1, A.2., A.3. and A.4., above shall be submitted to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Licensee responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of Federal and State Materials and Environmental Management Programs, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within thirty (30) days of the date of this Order. In addition, the Licensee and any other person adversely affected by this Order may request a hearing of this Order within thirty (30) days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee relies and the reasons as to why the Order should not have been issued. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

A request for a hearing must be filed in accordance with the NRC E-Filing Rule, which became effective on October 15, 2007. The E-Filing Final Rule was issued on August 28, 2007, (72 FR 49,139). The E-Filing process requires participants to submit and serve documents over the internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to

download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at: *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section III above shall be final twenty (20) days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section III shall be final when the extension expires if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 21st day of February, 2008.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Office of Federal and State Materials and Environmental Management Programs.

Attachment 1: List of Applicable Materials Licensees

Redacted

Attachment 2: Table 1: Radionuclides of Concern

TABLE 1.—RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226 [5]	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400

TABLE 1.—RADIONUCLIDES OF CONCERN—Continued

Radionuclide	Quantity of concern [1] (TBq)	Quantity of concern [2] (Ci)
Yb-169	3	81
Combinations of radioactive materials listed above [3]	See Footnote Below [4]	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, i of radionuclide, n, $A_{(i,n)}$, to the quantity of concern for radionuclide n, $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc..... ≥1.

[5] On August 31, 2005, the NRC issued a waiver, in accordance to Section 651(e) of the Energy Policy Act of 2005, for the continued use and/or regulatory authority of Naturally Occurring and Accelerator-Produced Material (NARM), which includes Ra-226. The NRC plans to terminate the waiver in phases, beginning November 30, 2007, and ending on August 7, 2009. The NRC has authority to regulate discrete sources of Ra-226, but has refrained from exercising that authority until the date of an entity's waiver termination. For entities that possess Ra-226 in quantities of concern, this Order becomes effective upon waiver termination. For information on the schedule for an entity's waiver termination, please refer to the NARM Toolbox Web site at *http://nrc-stp.ornl.gov/narmtoolbox.html.*

Attachment 3: Specific Requirements Pertaining to Fingerprinting and Criminal History Records Checks

The new fingerprinting requirements supplement previous requirements issued by the Increased Controls Order (EA–05–090).

Licensees currently have a program to grant unescorted access to individuals. As required by condition A.1 of the Order, Licensees shall modify its current trustworthiness and reliability program to include the following:

1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in attachment 2. The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) identification and criminal history records check and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints for unescorted access need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.61, or any person who has been favorably-decided by a U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g. National Agency Check, Transportation Worker Identification Credentials in accordance with 49 CFR Part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background checks and clearances in accordance with 27 CFR Part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins in accordance with 42 CFR Part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license in accordance with 49 CFR Part 1572, Customs and Border Patrol's Free and Secure Trade Program [1]) within the last five (5) calendar years, or any person who has an active federal security clearance (provided in the latter two cases that they make available the appropriate documentation [2]). Written confirmation from the Agency/employer which granted the federal security clearance or reviewed the FBI criminal history records results based upon a fingerprint identification check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires unescorted access to certain radioactive material associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI. Additionally, the Licensee shall submit a certification of the trustworthiness and reliability of the T&R Official as determined in accordance with paragraph B.2 of this Order.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements of the IC Order (EA–05–090), in making a determination whether to grant unescorted access to certain radioactive materials.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in attachment 2.

7. The Licensee shall document the basis for its determination whether to grant, or continue to allow unescorted access to risk significant radioactive materials equal to or greater than the quantities listed in attachment 2.

Prohibitions

A Licensee shall not base a final determination to deny an individual unescorted access to certain radioactive material solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the

[1] The FAST program is a cooperative effort between the Bureau of Customs and Border Patrol and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the U.S.-Canada and U.S.-Mexico borders. Participants in the FAST program, which requires successful completion of a background records check, may receive expedited entrance privileges at the northern and southern borders.

[2] This documentation must allow the T&R Official to verify that the individual has fulfilled the unescorted access requirements of Section 149 of the AEA by submitting to fingerprinting and an FBI identification and criminal history records check.

rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Right To Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR part 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an Official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI identification and criminal history records check after the record is made available for his/her review. The Licensee may make a final unescorted access to certain radioactive material determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on unescorted access to certain radioactive material, the Licensee shall provide the individual its documented basis for denial. Unescorted access to certain radioactive material shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining unescorted access to certain radioactive material. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the Licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of unescorted access to certain radioactive material (whether unescorted access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E8–3921 Filed 2–28–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding Extension of Deadline To Receive Comments on the Child Labor Review in the Production of Certain GSP-Eligible Hand-Loomed Carpets

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: On January 18, 2008, a public notice was published in the **Federal Register** on pages 3495–3496 requesting public comments by February 15, 2008, on whether each beneficiary country exporting certain hand-loomed carpets is taking steps to eliminate the worst forms of child labor, including the use of bonded child labor, in the production of certain carpets imported under the U.S. GSP program. The GSP Subcommittee of the Trade Policy Staff Committee has decided to extend the deadline to March 14, 2008, for receipt of public comments for this review.

FOR FURTHER INFORMATION CONTACT: The GSP Subcommittee of the TPSC, Office of the United States Trade Representative (USTR), 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The 2004 Miscellaneous Trade and Technical Corrections Act (HR 1047) (the ''2004 Act''), as approved by Congress, authorized the President to designate seven tariff lines relating to carpets (5702.51.20 (now 5702.50.20), 5702.91.30, 5702.92.00 (now 5702.92.10), 5702.99.10 (now 5702.99.05), 5703.10.00 (now 5703.10.20), 5703.20.10, and 5703.30.00 (now 5703.30.20)) as eligible for duty-free treatment under the GSP program. These tariff lines cover certain hand-loomed carpets and other textile floor coverings made of wool, cotton, fine animal hair, or man-made textile materials. Pursuant to the authorization in the 2004 Act, the President designated these seven tariff lines as eligible for duty-free treatment under the GSP program. The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) is conducting a triennial review of whether each beneficiary country is taking steps to eliminate the worst forms of child labor, including the use of bonded child labor, in the production of such carpets imported under the U.S. GSP program. If sufficient steps are not underway, the TPSC will recommend to the President changes in GSP coverage that would

eliminate from duty-free treatment under the GSP program those carpets found to be made with the worst forms of child labor.

For further information, please refer to the USTR FR Doc. E8–905, page 3495–3496, **Federal Register** Notice, dated January 18, 2008, Vol. 73 FR 3485: Notice Regarding the Initiation of Child Labor Review in the Production of Certain GSP-Eligible Hand-Loomed or Hand-Hooked Carpets., No. 13/Friday, January 18, 2008.

Opportunities for Public Comment and Inspection of Comments: The GSP Subcommittee of the TPSC invites comments for this review. Submissions should comply with 15 CFR Part 2007, except as modified below. All submissions should identify the subject article(s) in terms of the country and the eight-digit Harmonized Tariff Schedule of the United States subheading number. The deadline for submission of comments is extended until March 14, 2008.

Requirements for Submissions: In order to facilitate prompt processing of submissions, USTR requires electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. These submissions should be single-copy transmissions in English, and including attachments, with the total submission not to exceed 25 single-spaced standard letter-size pages in 12-point type and three megabytes as sent as a digital file attached to an e-mail transmission. E-mail submissions should use the following subject line: ''Child Labor Review in the Production of Certain GSP-Eligible Hand-loomed or Hand-hooked Carpet Lines'' followed by the country and the eight-digit HTSUS subheading number. Documents must be submitted in English in one of the following formats: WordPerfect (.WPD), Adobe (.PDF), MSWord (.DOC), or text (.TXT) files. Documents cannot be submitted as electronic image files or contain embedded images, e.g., ''.JPG'', ''.TIF'', ''.BMP'', or ''.GIF''. Supporting documentation submitted as spreadsheets are acceptable as Excel files, formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each page of the document. The non-confidential version must also be clearly marked at the top and bottom of each page (either ''PUBLIC VERSION'' or ''NON–CONFIDENTIAL''). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the party (government, company, union, association, etc.) which is making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's name, organization name, address, telephone number and e-mail address. The e-mail address for these submissions is *FR0081@USTR.EOP.GOV*. **Note:** The letters ''FR'' in the e-mail address are followed by the number, zero, not a letter. Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Marideth J. Sandler,

Executive Director, Generalized System of Preferences, Office of the U.S. Trade Representative.

[FR Doc. E8–3925 Filed 2–28–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28168; 812–13367]

Kohlberg Capital Corporation; Notice of Application

February 25, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 23(a), 23(b) and 63 of the Act, and under sections 57(a)(4) and 57(i) of the Act and rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

Summary of the Application: Applicant, Kohlberg Capital Corporation (''Kohlberg Capital'') requests an order to permit it to issue restricted shares of its common stock to its officers and employees under the terms of its equity incentive plan.

Filing Dates: The application was filed on February 27, 2007, and amended on February 13, 2008 and February 22, 2008. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2008, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicant, 295 Madison Avenue, 6th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850).

Applicant's Representations

1. Kohlberg Capital, a Delaware corporation, is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Act.[1] Kohlberg Capital provides debt and equity growth capital to privately-held middle market companies and its investment objective is to generate current income and capital appreciation from the investments made by those companies in senior secured term loans, mezzanine debt and selected equity investments. Kohlberg Capital may also invest in loans to larger, publicly traded companies, high-yield bonds, distressed debt securities and debt and equity securities issued by collateralized debt obligation funds. Shares of Kohlberg Capital's common stock are traded on the NASDAQ Global Select Market under the symbol ''KCAP.'' As of September 30, 2007, there were 17, 997,611 shares of Kohlberg Capital's common stock outstanding. As of that date, Kohlberg Capital had 26 employees, including the employees of its wholly-owned consolidated subsidiaries.[2]

2. Kohlberg Capital currently has a seven-member board of directors (the ''Board'') of whom three are ''interested persons'' of Kohlberg Capital within the meaning of section 2(a)(19) of the Act and four are not interested persons (the ''non-interested directors''). The four non-interested directors are neither employees nor officers of Kohlberg Capital (''Non-employee Directors''). Currently, Kohlberg Capital's Non-employee Directors are all non-interested Directors, but it is possible that Kohlberg Capital may have Non-employee Directors in the future who are interested persons of Kohlberg Capital.

3. Kohlberg Capital believes that its successful operation depends on its ability to offer compensation packages to its professionals that are competitive with those offered by its competitors. Kohlberg Capital believes its ability to adopt a compensation plan providing for the periodic issuance of shares of restricted stock (*i.e.*, stock that, at the time of issuance, is subject to certain forfeiture restrictions, and thus is restricted as to its transferability until such forfeiture restrictions have lapsed) (the ''Restricted Stock'') is vital to its future growth and success. Kohlberg Capital wishes to adopt an equity-based compensation plan (the ''Plan'') for its officers and employees (''Employees''), as well as employees of its wholly owned consolidated subsidiaries (together with the Employees, the ''Participants'').

4. The Plan will authorize the issuance of shares of Restricted Stock subject to certain forfeiture restrictions. These restrictions may relate to continued employment, the performance of Kohlberg Capital, or other restrictions deemed by the Board to be appropriate. The Restricted Stock will be subject to restrictions on transferability and other restrictions as required by the Board. Except to the extent restricted under the terms of the Plan, a Participant granted Restricted Stock will have all the rights of any other shareholder, including the right to vote the Restricted Stock and the right to receive dividends. During the restriction period, the Restricted Stock generally may not be sold, transferred, pledged, hypothecated, margined, or otherwise encumbered by the Participant. Except as the Board otherwise determines, upon termination of a Participant's employment during the applicable restriction period, Restricted Stock for which forfeiture restrictions have not lapsed at the time of such termination shall be forfeited.

5. The maximum amount of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of Kohlberg Capital's common stock on the effective date of the Plan plus 10% of the outstanding shares of Kohlberg Capital's common stock issued or delivered by Kohlberg Capital (other than pursuant to compensation plans) during the term of the Plan.[3] The Plan limits the total number of shares that may be awarded to any single Participant in a single year to 500,000 shares. In addition, no Restricted Stock Participant may be granted more than 25% of the shares reserved for issuance under the Plan. The Plan will be administered by the Board, which will award shares of Restricted Stock to the Participants from time to time as part of the Participants' compensation based on a Participant's actual or expected performance and value to Kohlberg Capital.

6. Each issuance of Restricted Stock under the Plan will be approved by the required majority, as defined in section 57(o) of the Act,[4] of Kohlberg Capital's directors on the basis that the issuance is in the best interests of Kohlberg Capital and its shareholders. The date on which the required majority approves an issuance of Restricted Stock will be deemed the date on which the subject Restricted Stock is granted.

7. The Plan was approved by the Board on February 5, 2008, including by a majority of the non-interested directors and the required majority as defined in section 57(o) of the Act. The Plan will be submitted for approval to Kohlberg Capital's shareholders, and will become effective upon such approval, subject to and following receipt of the order.

Applicant's Legal Analysis

Sections 23(a) and (b), Section 63

1. Under section 63 of the Act, the provisions of section 23(a) of the Act generally prohibiting a registered closed-end investment company from issuing securities for services or for property other than cash or securities are made applicable to BDCs. This provision would prohibit the issuance of Restricted Stock as a part of the Plan.

2. Section 23(b) generally prohibits a closed-end management investment company from selling its common stock at a price below its current net asset value (''NAV''). Section 63(2) makes section 23(b) applicable to BDCs unless certain conditions are met. Because Restricted Stock that would be granted under the Plan would not meet the terms of section 63(2), sections 23(b) and 63 prohibit the issuance of the Restricted Stock.

3. Section 6(c) provides that the Commission may, by order upon application, conditionally or

[1] Kohlberg Capital was organized on August 8, 2006. On December 4, 2006, Kohlberg Capital filed with the Commission its registration statement on Form N–2 under the Securities Act of 1933, as amended, in connection with its initial public offering of common stock (the ''IPO''). On December 5, 2006, Kohlberg Capital elected to be regulated as a BDC. Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities. Kohlberg Capital completed its IPO on December 15, 2006.

[2] Kohlberg Capital does not currently have any wholly-owned consolidated subsidiaries.

[3] For purposes of calculating compliance with this limit, Kohlberg Capital will count as Restricted Stock all shares of its common stock that are issued pursuant to the Plan less any shares that are forfeited back to Kohlberg Capital and cancelled as a result of forfeiture restrictions not lapsing.

[4] The term ''required majority,'' when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a BDC's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Kohlberg Capital requests an order pursuant to section 6(c) of the Act granting an exemption from the provisions of sections 23(a) and (b) and section 63 of the Act. Kohlberg Capital states that the concerns underlying those sections include: (a) Preferential treatment of investment company insiders and the use of options and other rights by insiders to obtain control of the investment company; (b) complication of the investment company's structure that makes it difficult to determine the value of the company's shares; and (c) dilution of shareholders' equity in the investment company. Kohlberg Capital states that the Plan does not raise the concern about preferential treatment of Kohlberg Capital's insiders because the Plan is bona fide compensation plan of the type that is common among corporations generally. In addition, section 61(a)(3)(B) of the Act permits a BDC to issue to its officers, directors and employees, pursuant to an executive compensation plan, warrants, options and rights to purchase the BDC's voting securities, subject to certain requirements. Kohlberg Capital states that, for reasons that are unclear, section 61 and its legislative history do not address the issuance by a BDC of restricted stock as incentive compensation. Kohlberg Capital states, however, that the issuance of Restricted Stock is substantially similar, for purposes of investor protection under the Act, to the issuance of warrants, options, and rights as contemplated by section 61. Kohlberg Capital also asserts that the Plan would not become a means for insiders to obtain control of Kohlberg Capital because the number of shares of Kohlberg Capital issuable under the Plan would be limited as set forth in the application. Moreover, no individual Restricted Stock Participant could be issued more than 25% of the shares reserved for issuance under the Plan.

5. Kohlberg Capital further states that the Plan will not unduly complicate Kohlberg Capital's capital structure because equity-based compensation arrangements are widely used among corporations and commonly known to investors. Kohlberg Capital notes that the Plan will be submitted to its shareholders for their approval. Kohlberg Capital represents that a concise, ''plain English'' description of the Plan, including its potential dilutive effect, will be provided in the proxy materials that will be submitted to Kohlberg Capital's shareholders. Kohlberg Capital also states that it will comply with the proxy disclosure requirements in Item 10 of Schedule 14A under the Securities Exchange Act of 1934 (the ''Exchange Act''). Kohlberg Capital further notes that the Plan will be disclosed to investors in accordance with the requirements of the Form N–2 registration statement for closed-end investment companies, and pursuant to the standards and guidelines adopted by the Financial Accounting Standards Board for operating companies. In addition, Kohlberg Capital will comply with the disclosure requirements for executive compensation plans applicable to operating companies under the Exchange Act.[5] Kohlberg Capital thus concludes that the Plan will be adequately disclosed to investors and appropriately reflected in the market value of Kohlberg Capital's shares.

6. Kohlberg Capital acknowledges that, while awards granted under the Plan would have a dilutive effect on the shareholders' equity in Kohlberg Capital, that effect would be outweighed by the anticipated benefits of the Plan to Kohlberg Capital and its shareholders. Kohlberg Capital asserts that it needs the flexibility to provide the requested equity-based employee compensation in order to be able to compete effectively with other financial services firms for talented professionals. These professionals, Kohlberg Capital suggests, in turn are likely to increase Kohlberg Capital's performance and shareholder value. Kohlberg Capital also asserts that equity-based compensation would more closely align the interests of Kohlberg Capital's Employees with those of its shareholders. In addition, Kohlberg Capital states that its shareholders will be further protected by the conditions to the requested order that assure continuing oversight of the operation of the Plan by Kohlberg Capital's Board.

Section 57(a)(4), Rule 17d–1

7. Section 57(a) proscribes certain transactions between a BDC and persons related to the BDC in the manner described in section 57(b) (''57(b) persons''), absent a Commission order. Section 57(a)(4) generally prohibits a 57(b) person from effecting a transaction in which the BDC is a joint participant absent such an order. Rule 17d–1, made applicable to BDCs by section 57(i), proscribes participation in a ''joint enterprise or other joint arrangement or profit-sharing plan,'' which includes a stock option or purchase plan. Employees and directors of a BDC are 57(b) persons. Thus, the issuance of shares of Restricted Stock could be deemed to involve a joint transaction involving a BDC and a 57(b) person in contravention of section 57(a)(4). Rule 17d–1(b) provides that, in considering relief pursuant to the rule, the Commission will consider (i) whether the participation of the company in a joint enterprise is consistent with the Act's policies and purposes and (ii) the extent to which that participation is on a basis different from or less advantageous than that of other participants.

8. Kohlberg Capital requests an order pursuant to section 57(a)(4) and rule 17d–1 to permit the Plan. Kohlberg Capital states that the Plan, although benefiting the Participants and Kohlberg Capital in different ways, are in the interests of Kohlberg Capital's shareholders because the Plan will help Kohlberg Capital attract and retain talented professionals, help align the interests of Kohlberg Capital's employees with those of its shareholders, and in turn help produce a better return to Kohlberg Capital's shareholders.

Applicant's Conditions

Applicant agrees that the order granting the requested relief will be subject to the following conditions:

1. The Plan will be authorized by Kohlberg Capital's shareholders.

2. Each issuance of Restricted Stock to an Employee will be approved by the required majority, as defined in section 57(o) of the Act, of Kohlberg Capital's directors on the basis that such issuance is in the best interest of Kohlberg Capital and its shareholders.

3. The amount of voting securities that would result from the exercise of all of Kohlberg Capital's outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan at the time of

[5] Kohlberg Capital will comply with the amendments to the disclosure requirements for executive and director compensation, related party transactions, director independence and other corporate governance matters, and security ownership of officers and directors to the extent adopted and applicable to BDCs. *See* Executive Compensation and Related Party Disclosure, Securities Act Release No. 8655 (Jan. 27, 2006) (proposed rule); Executive Compensation and Related Party Disclosure, Securities Act Release No. 8732A (Aug. 29, 2006) (final rule and proposed rule), as amended by Executive Compensation Disclosure, Securities Act Release No. 8765 (Dec. 22, 2006) (adopted as interim final rules with request for comments).

issuance shall not exceed 25% of the outstanding voting securities of Kohlberg Capital, except that if the amount of voting securities that would result from the exercise of all of Kohlberg Capital's outstanding warrants, options, and rights issued to Kohlberg Capital's directors, officers, and employees, together with any Restricted Stock issued pursuant to the Plan, would exceed 15% of the outstanding voting securities of Kohlberg Capital, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights, together with any Restricted Stock issued pursuant to the Plan, at the time of issuance shall not exceed 20% of the outstanding voting securities of Kohlberg Capital.

4. The maximum amount of shares of Restricted Stock that may be issued under the Plan will be 10% of the outstanding shares of common stock of Kohlberg Capital on the effective date of the Plan plus 10% of the number of shares of Kohlberg Capital's common stock issued or delivered by Kohlberg Capital (other than pursuant to compensation plans) during the term of the Plan.

5. The Board will review the Plan at least annually. In addition, the Board will review periodically the potential impact that the issuance of Restricted Stock under the Plan could have on Kohlberg Capital's earnings and NAV per share, such review to take place prior to any decisions to grant Restricted Stock under the Plan, but in no event less frequently than annually. Adequate procedures and records will be maintained to permit such review. The Board will be authorized to take appropriate steps to ensure that the grant of Restricted Stock under the Plan would not have an effect contrary to the interests of Kohlberg Capital's shareholders. This authority will include the authority to prevent or limit the granting of additional Restricted Stock under the Plan. All records maintained pursuant to this condition will be subject to examination by the Commission and its staff.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3845 Filed 2–28–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57375; File No. SR–ISE–2008–14]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Solicitation of Interest Orders

February 22, 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 February 19, 2008, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by ISE. ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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 is proposing to amend the parameters governing Solicitation of Interest orders (''SOIs''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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.

[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).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the parameters governing SOIs that are entered into MidPoint Match (''MPM'').[5] When an SOI order is entered, the System sends Equity Electronic Access Members (''Equity EAMs'') a solicitation notice containing the name of the equity security for which the order was entered. Currently, an SOI order must be at least 2,000 shares and cannot be canceled or changed for five seconds. An immediate-or-cancel (''IOC'') SOI that is not executed within the five second no-cancellation period is automatically canceled.[6]

The Exchange proposes to reduce the no cancellation parameter to one second. The no cancellation parameter, currently set at five seconds, requires that Equity EAMs using SOIs relinquish the right to cancel or change an SOI order for five seconds. In the current market environment, many potential SOI users are reluctant to commit to a time period of that duration. Instead, Equity EAMs prefer a one second timeout, enabling them to cancel or revise the order in a timeframe that is more consistent with algorithmic trading patterns. Accordingly, an IOC SOI will also time out in one second.

Additionally, the Exchange proposes to reduce the minimum order size to 500 shares. The current minimum order size of 2,000 shares is larger than the typical order size generated by algorithms. The Exchange proposes to revise the minimum order size to 500 shares, which is more consistent with algorithmic trading patterns.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with 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, serve to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, this filing will provide investors with more flexibility in

[5] *See* ISE Rule 2129 (MidPoint Match).

[6] A regular SOI is converted to a Standard Order in MPM if it is not executed or canceled within 10 seconds; *see* ISE Rule 2129(d)(2).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

entering orders and receiving executions of such orders.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) may not become operative prior to 30 days after the date of filing unless the Commission designates a shorter time if such action is consistent with the protection of investors and the public interest.[11] The Exchange has requested that the Commission waive the 30-day operative delay set forth in Rule 19b–4(f)(6)(iii) under the Act.[12] The Commission believes that the earlier operative date is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the changes to the parameters governing SOIs without delay. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.[13]

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). 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 notes that ISE has satisfied the five-day pre-filing notice requirement.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of accelerating the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–14 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–2008–14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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–2008–14 and should be submitted on or before March 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3841 Filed 2–28–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57367; File No. SR–CBOE–2007–120]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Market-Makers and Remote Market-Makers

February 21, 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 October 11, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On February 13, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE rules relating to Market-Makers and Remote Market-Makers (''RMMs''). The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment 1 replaced the original filing in its entirety.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend CBOE rules relating to Market-Makers and RMMs. In particular, CBOE proposes to: (i) Delete reference to RMMs in its rules; (ii) amend CBOE Rule 8.3 and CBOE Rule 8.7 relating to the appointment of Market-Makers and Market-Maker obligations, respectively; and (iii) update or delete outdated provisions in other rules, including CBOE Rule 8.3A relating to Class Quoting Limits (''CQLs'').

CBOE proposes to delete CBOE Rule 8.4 and, as a result, individuals and member organizations that are registered as RMMs would be considered Market-Makers under CBOE's rules.[4] RMMs were established in 2005 to allow market participants the ability to stream electronic quotations from a location outside of the physical trading station for an option class. At the time, Market-Makers were restricted from submitting electronic quotations from a location outside of the physical trading station. Over time, CBOE has amended its rules to permit Market-Makers to create a virtual trading crowd appointment and submit electronic quotations away from CBOE's trading floor in a Market-Maker's appointed classes. While on the trading floor, a Market-Maker is not required to be present in the trading station where a class is located in order to stream electronic quotations into the class.[5]

The obligations of Market-Makers and RMMs are generally the same, and Market-Makers in Hybrid and Hybrid 2.0 option classes can function remotely if they choose. Additionally, the ''appointment costs'' and transaction fees of RMMs and Market-Makers are identical. Accordingly, CBOE does not see any reason to continue to maintain a category of market participant called RMM.

In connection with the deletion of the reference to RMMs, CBOE proposes to amend the definition of Market-Maker to include member organizations. Currently, an RMM can be either an individual or a member organization. Under CBOE Rule 8.1, however, a Market-Maker is defined as an individual (either a member or a nominee of a member organization) registered with CBOE for the purpose of making transactions as dealer-specialist on CBOE in accordance with the provisions of Chapter VIII. Therefore, CBOE proposes to amend the definition of Market-Maker to include member organizations. CBOE also proposes to amend CBOE Rule 3.3 to clarify that the member organization membership statuses that are approved by the Membership Committee include Market-Maker.[6]

CBOE also proposes to delete Interpretation and Policy .02 to CBOE Rule 3.8, and amend CBOE Rule 3.8(a)(ii) to allow any member organization that is the owner or lessee of more than one membership to designate one individual to be the nominee for all memberships utilized by the organization. However, for each membership utilized for trading in open outcry on the trading floor, the organization must designate a different individual to be the nominee for each of the memberships. Currently, only RMMs, e-DPMs and Off-Floor DPMs are permitted to designate one individual to be the nominee for all memberships utilized by the organization. CBOE believes it is appropriate to allow any member organization to designate one individual to be the nominee for all memberships utilized by the organization, and if any of the memberships are utilized for trading in open outcry on the trading floor, the organization must designate a different individual to be the nominee for each of the memberships.

CBOE also proposes to update and amend CBOE Rule 8.3 pertaining to the appointment of Market-Makers. First, CBOE proposes to amend paragraph (a) of CBOE Rule 8.3 to provide that appointments can be selected by Market-Makers or made by CBOE consistent with the factors set forth in paragraph (a). Second, CBOE proposes to amend paragraph (c)(ii) to delete the requirement that a Market-Maker may hold an appointment in an appropriate number of Hybrid option classes that are located at one trading station. This limitation which requires that appointments in Hybrid option classes must be located at one trading station is not necessary. Moreover, since all option classes are either Hybrid 2.0 option classes or Hybrid 3.0 option classes, it is irrelevant.

Third, CBOE proposes to amend and reorganize paragraph (c)(vii) of CBOE Rule 8.3 pertaining to the two current pilot programs that are in effect, and also to extend for an additional year the pilot programs. Specifically:

- Proposed new subparagraph (1) of CBOE Rule 8.3(c)(vii) describes the existing pilot program which allows an e-DPM or Off-Floor DPM to have one affiliated Market-Maker trade on CBOE's trading floor and submit electronic quotations in any specific option class allocated to the e-DPM or Off-Floor DPM, provided such affiliated Market-Maker trades on a separate membership and is present in the trading crowd (*see* CBOE Rules 8.85(a)(v) and 8.93(vii)). As noted above, CBOE also proposes to extend for an additional year, until March 14, 2009, this pilot program, as it believes that the pilot program has been successful, and CBOE has not experienced any negative effects with respect to the pilot program.
- Proposed new subparagraph (2) of CBOE Rule 8.3(c)(vii) maintains the existing pilot program which permits an RMM to have one affiliated Market-Maker trade in open outcry and submit electronic quotations in any specific option class in which the Market-Maker holds an appointment, provided such affiliated Market-Maker trades on a separate membership (*see* CBOE Rule 8.4(c)(i)). However, because CBOE is deleting reference to RMMs, subparagraph (2) of CBOE Rule 8.3(c)(vii) states that a Market-Maker in a class may have one affiliated Market-Maker trade in open outcry and submit electronic quotations in any specific option class in which the Market-Maker holds an appointment, provided such affiliated Market-Maker trades on a separate membership and is present in the trading crowd. As noted above, CBOE proposes to extend for an additional year, until March 14, 2009, the pilot program, as CBOE believes that it has been successful, and CBOE has not experienced any negative effects with respect to the pilot program.
- Proposed new subparagraph (3) of CBOE Rule 8.3(c)(vii) provides that there is no restriction on (a) affiliated

[4] In connection with this change, CBOE proposes to make related changes to CBOE Rules 3.2, 3.3, 6.45A, 6.45B, 8.7, 8.13, 8.85, and 8.92 which reference the term RMM, and delete Rule 8.61, which pertains to the evaluation of RMMs.

[5] *See* CBOE Rule 8.3(c)(vi).

[6] Interpretation .02 of CBOE Rule 3.3 is also proposed to be amended to include reference to Lead Market-Maker.

Market-Makers holding an appointment and submitting electronic quotations in the same class, provided CBOE uses an allocation algorithm in the class that does not allocate electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer; or (b) affiliated Market-Makers holding an appointment in the same class for purposes of trading in open outcry.

• Proposed new subparagraph (4) of CBOE Rule 8.3(c)(vii) simply restates the multiple aggregation unit pilot program currently applicable to RMMs (*see* CBOE Rule 8.4(c)(ii)) and Market-Makers (*see* CBOE Rule 8.3(c)(viii)). CBOE also proposes to extend for an additional year, until March 14, 2009, the pilot program. CBOE believes that the pilot program has been successful, and CBOE has not experienced any negative effects with respect to the pilot program.

With regard to the obligations of Market-Makers, CBOE proposes to amend CBOE Rule 8.7 to delete references to RMMs and other outdated references to appointed trading stations. Additionally, CBOE proposes to delete reference to DPMs representing orders as agent in CBOE Rule 8.7(d)(i)(C), as DPMs cannot act as an agent for orders (*see* Rule 8.85(c)).

CBOE also proposes to update CBOE Rule 8.3A pertaining to CQLs. CBOE proposes to amend paragraph (a) to state that the DPM and e-DPMs (if applicable) assigned to a product and Market-Makers who hold an appointment in the product are entitled to quote electronically in the product for as long as they maintain an appointment in the product. CBOE proposes to amend paragraphs (b) and (c) to delete reference to March 18, 2005, and also to provide that any Market-Maker holding an appointment in a product prior to its addition to the Hybrid 2.0 Platform or Hybrid Trading System, respectively, will be entitled to quote electronically in the product. Finally, CBOE proposes to delete existing Interpretation .02, as it is outdated.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Act and the rules and regulations thereunder 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 requirements under Section 6(b)(5) of the Act[8] that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CBOE consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2007–120 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–CBOE–2007–120. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–120 and should be submitted on or before March 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3798 Filed 2–28–08; 8:45 am]

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[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57360; File No. SR–ISE–2008–06]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create a Delta Hedging Exemption from Equity Options Position Limits

February 20, 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 February 1, 2008, the International Securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to create a delta hedging exemption from equity options position limits pursuant to ISE Rule 413 (Exemptions from Position Limits). The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

All options traded on the Exchange are subject to position and exercise limits, as provided under ISE Rules 412 and 413.[5] Position limits are imposed, generally, to maintain fair and orderly markets for options and other securities by limiting the amount of control one or more affiliated persons or entities may have over one particular options class or the security or securities that underlie that options class. Exchange rules also contain various hedge exemptions to allow certain hedged positions in excess of the applicable standard position limit.[6]

Over the years, ISE has increased the size of options position and exercise limits, as well as the size and scope of available hedge exemptions to the applicable position limits.[7] These hedge exemptions generally require a one-to-one hedge (*i.e.*, one stock option contract must be hedged by the number of shares underlying the options contract, typically 100 shares). In practice, however, many firms do not hedge their options positions in this manner. Instead, these firms engage in what is commonly known as ''delta hedging.'' Delta hedging varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying security.[8] Delta hedging is a widely accepted method for risk management.

Delta Neutral-Based Equity Hedge Exemption. The Exchange proposes to adopt a new exemption from equity options position and exercise limits [9] for positions held by ISE members and certain of their affiliates that are ''delta neutral'' [10] under a ''permitted pricing model'' (as defined below), subject to certain conditions (''Exemption''). The proposed Exemption would apply only to equity options (stock options and options on exchange-traded funds (''ETFs'')).[11]

Any equity option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the ''option contract equivalent of the net delta'' of such position would be subject to the appropriate position limit.[12]

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position's net delta or whether the options position is delta neutral. In addition, members could not use the same equity or other financial instrument position in connection with more than one hedge exemption. Therefore, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, must be made using a permitted pricing model. A ''permitted pricing model'' is defined in proposed Rule 413(a)(7)(C) to mean the pricing model maintained and operated by The Options Clearing Corporation (''OCC'') and the pricing models used by (i) a member or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3–1; (ii) a financial holding company (''FHC'') or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; [13] (iii) an

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Position limits for index options are provided separately under Rules 2004, 2005, and 2006.

[6] *See* Rule 413.

[7] *See, e.g.*, Securities Exchange Act Release Nos. 56493 (September 21, 2007), 72 FR 55266 (September 28, 2007); 56263 (August 15, 2007), 72 FR 47105 (August 22, 2007); and 56020 (July 6, 2007), 72 FR 38109 (July 12, 2007).

[8] To illustrate, a stock option contract with a delta of .5 will move $0.50 for every $1.00 move in the underlying stock.

[9] Rule 414 establishes exercise limits for an option at the same level as the option's position limit under Rule 412; therefore, no changes are proposed to Rule 414.

[10] The term ''delta neutral'' is defined in proposed Rule 413(a)(7)(A) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

[11] The Exchange intends to submit a separate proposed rule change to adopt a delta neutral based hedge exemption for certain index options and to expand the delta neutral-based hedge exemption for ETF options to allow highly correlated instruments to be included in any ETF option net delta calculation.

[12] Under proposed Rule 413(a)(7)(B), the term ''options contract equivalent of the net delta'' is defined as the net delta divided by the number of shares underlying the option contract, and the term ''net delta'' is defined as, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

[13] The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) The requirements of the Board of Governors of the Federal Reserve System (''FRB''), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the FRB, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where ''principal regulator'' means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such

Continued

SEC registered OTC derivatives dealer;[14] and (iv) a national bank.[15]

Aggregation of Accounts. Members and non-member affiliates relying on the Exemption would be required to ensure that the permitted pricing model is applied to all positions in or relating to the security underlying the relevant options position that are owned or controlled by the member, or its affiliates.

However, the net delta of an options position held by an entity entitled to rely on the Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that: (i) The entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in Rule 412(f), exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Exemption.[16]

Any member or non-member affiliate relying on the Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Exemption for purposes of compliance with Exchange position or exercise limits.[17]

Obligations of Members and Affiliates. Any member relying on the Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Exemption. In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this Exemption.[18]

The options positions of a non-member affiliate relying on the Exemption must be carried by a member with which it is affiliated. A member carrying an account that includes an equity option position for a non-member affiliate that intends to rely on the Exemption would be required to obtain from such non-member affiliate a written certification that it is using a permitted pricing model as defined in the rule for purposes of the Exemption.[19]

Reporting. Under proposed Rule 413(a)(7)(F), each member relying on the Exemption would be required to report, in accordance with Rule 415[20] (i) all equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to Rule 413(a)(7)(F), for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Rule 413, the net delta and the options contract equivalent of the net delta of such position.

The Exchange and other self-regulatory organizations are working on modifying the Large Options Position Report system and/or OCC reports to allow a member to indicate that an equity options position is delta neutral.

Records. Under proposed Rule 413(a)(7)(G), each member relying on the Exemption would be required to (i) retain, and would be required to undertake reasonable efforts to ensure that any non-member affiliate of the member relying on the exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.[21]

Reliance on Federal Oversight. As provided under proposed Rule 413, a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the Commission, the FRB or another federal financial regulator. In adopting the proposed Exemption, the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

The Exchange will issue a regulatory circular stating the operative date and describing the substantive terms of the proposed rule change no later than 60 days after the Commission issues notice of the proposed rule change. The operative date shall be such date as may be necessary to ensure that necessary technology changes to The Options Clearing Corporation and the Securities Industry Automation Corporation reports used for position limit surveillance have been completed.[22]

2. *Statutory Basis*

The Exchange believes the rule proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[23] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5)[24] Act requirements that the rules of an exchange be designed to promote just

company's consolidated supervised holding company group. *See* proposed Rule 413(a)(7)(C)(3).

[14] The pricing model of a Commission-registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to Rules 15c3–1 and 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* proposed Rule 413(a)(7)(C)(4).

[15] The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* proposed Rule 413(a)(7)(C)(5).

[16] *See* proposed Rule 413(a)(7)(D)(2).

[17] *See* proposed Rule 413(a)(7)(D)(3).

[18] *See* proposed Rule 413(a)(7)(E).

[19] In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) Is relying on the Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Exemption; (c) will promptly notify the member if it ceases to rely on the Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. *See* subparagraph (E)(3) of proposed Rule 413(a)(7).

[20] Rule 415 requires, among other things, that members report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

[21] A member would be authorized to report position information of its non-member affiliate pursuant to the written statement required under proposed Rule 413(a)(7)(E)(3)(ii)(d).

[22] Telephone conversation between John Rademacher, Assistant General Counsel, ISE, and Ira Brandriss, Special Counsel, Division of Trading and Markets, Commission, on February 19, 2008.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[25]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does no 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[26] and Rule 19b–4(f)(6) thereunder.[27]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[28] However, Rule 19b–4(f)(6)(iii)[29] 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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to implement the delta hedging exemption from equity options position limits without needless delay. The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated.[30] The Commission believes that ISE's proposal to create a delta hedging exemption from equity options position limits raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[31]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–06 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–2008–06. 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–2008–06 and should be submitted on or before March 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Florence E. Harmon,

Deputy Secretary.

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[25] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (adopting rules relating to OTC Derivatives Dealers).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

[29] *Id.*

[30] *See* Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR–CBOE–2007–99).

[31] 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).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57358; File No. SR–NYSEArca–2008–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create a Delta Hedging Exemption From Equity Options Position Limits

February 20, 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 February 6, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

below, which Items have been substantially prepared by NYSE Arca. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

NYSE Arca proposes to amend Exchange Rule 6.8 in order to create a delta hedging exemption from equity options position limits. The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and *http://www.nysearca.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca 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. NYSE Arca 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

All options traded on the Exchange are subject to position and exercise limits, as provided under NYSE Arca Rule 6.8.[5] Position limits are imposed, generally, to maintain fair and orderly markets for options and other securities by limiting the amount of control by one or more affiliated persons or entities over one particular options class or the security or securities that underlie that options class. Exchange rules also contain various hedge exemptions to allow certain hedged positions in excess of the applicable standard position limit.[6]

Over the years, NYSE Arca has, at times, increased the size of options position and exercise limits, as well as the size and scope of available hedge exemptions to the applicable position limits.[7] These hedge exemptions generally require a one-to-one hedge (*i.e.*, one stock option contract must be hedged by the number of shares underlying the options contract, typically 100 shares). In practice, however, many firms do not hedge their options positions in this manner. Instead, these firms engage in what is commonly known as ''delta hedging.'' Delta hedging varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying security.[8] The Exchange believes that delta hedging is a widely accepted method for risk management.

Delta Neutral-Based Equity Hedge Exemption. The Exchange proposes to adopt a new exemption from equity options position and exercise limits [9] for positions held by NYSE Arca OTP Holders and OTP Firms,[10] and certain of their affiliates, that are ''delta neutral'' [11] under a ''permitted pricing model'' (as defined below), subject to certain conditions (''Exemption''). The proposed Exemption would apply only to equity options (stock options and options on exchange-traded funds (''ETFs'')).[12]

Any equity option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the ''option contract equivalent of the net delta'' of such position would be subject to the appropriate position limit.[13]

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position's net delta or whether the options position is delta neutral. In addition, members could not use the same equity or other financial instrument position in connection with more than one hedge exemption. Therefore, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, must be made using a permitted pricing model. A ''permitted pricing model'' is defined in proposed Rule 6.8 Commentary .09(c) to mean the pricing model maintained and operated by The Options Clearing Corporation (''OCC'') and the pricing models used by: (i) An OTP Holder or OTP Firm or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3–1 under the Act; (ii) a financial holding company (''FHC'') or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; [14]

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Position limits for index options are provided separately under NYSE Arca Rule 5.15 through Rule 5.17.

[6] *See* NYSE Arca Rule 6.8 Commentary .07–.08.

[7] *See* Securities Exchange Act Release Nos. 55347 (February 26, 2007), 72 FR 9823 (March 5, 2007) (SR–NYSEArca–2007–19); 54385 (August 30, 2006), 71 FR 53150 (September 8, 2006) (SR–NYSEArca–2006–49); 51286 (March 1, 2005) 70 FR 11297 (SR–PCX–2003–55); and 45737 (April 11, 2005), 67 FR 18975 (SR–PCX–2000–45).

[8] To illustrate, a stock option contract with a delta of .5 will move $0.50 for every $1.00 move in the underlying stock.

[9] NYSE Arca Rule 6.9 establishes exercise limits for an option at the same level as the option's position limit under NYSE Arca Rule 6.8; therefore, no changes are proposed to Rule 6.9.

[10] OTP Holders (NYSE Arca Rule 1.1(q)) and OTP Firms (NYSE Arca Rule 1.1(r)) have the status of a ''member'' of the Exchange as defined in Section 3 of the Act, 15 U.S.C. 78c.

[11] The term ''delta neutral'' is defined in proposed Rule 6.8 Commentary .09(a) as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

[12] The Exchange intends to submit a separate proposed rule change to adopt a delta neutral-based hedge exemption for certain index options and to expand the delta neutral-based hedge exemption for ETF options to allow highly correlated instruments to be included in any ETF option net delta calculation.

[13] Under proposed Rule 6.8 Commentary .09(b) the term ''options contract equivalent of the net delta'' is defined as the net delta divided by the number of shares underlying the option contract, and the term ''net delta'' is defined as, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

[14] The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) The requirements of the Board of Governors of the Federal Reserve System (''FRB''), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the FRB, provided that the OTP Holder or OTP Firm (or affiliate thereof) relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where ''principal

(iii) a Commission-registered OTC derivatives dealer; [15] and (iv) a national bank.[16]

Aggregation of Accounts. An OTP Holder or OTP Firm (or an affiliate thereof) relying on the Exemption would be required to ensure that the permitted pricing model is applied to all positions in or relating to the security underlying the relevant options position that are owned or controlled by the OTP Holder or OTP Firm, or its affiliate.

However, the net delta of an options position held by an entity entitled to rely on the Exemption, or by a separate and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that: (i) The entity demonstrates to the Exchange's satisfaction that no control relationship [17] exists between such affiliates or trading units; and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Exemption.[18]

The Exchange has previously set forth in a regulatory bulletin the conditions under which it will deem control exists between affiliated broker dealers and between separate and distinct trading units within the same broker-dealer.[19] The Exchange will also issue a subsequent regulatory bulletin, explaining the aggregation of accounts, for the purpose of position limits, for broker-dealers and their non-broker dealer affiliates. The Exchange will issue this bulletin prior to the operative date of this rule change.

Any OTP Holder or OTP Firm (or affiliate thereof) relying on the Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such OTP Holder or OTP Firm (or affiliate thereof) relying on the Exemption for purposes of compliance with Exchange position or exercise limits.[20]

Obligations of OTP Holders and OTP Firms (and affiliates thereof). Any OTP Holder or OTP Firm relying on the Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Exemption. In addition, by such reliance, such OTP Holder or OTP Firm would authorize any other person carrying for such OTP Holder or OTP Firm an account including, or with whom such OTP Holder or OTP Firm has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this Exemption.[21]

The options positions of a non-OTP Holder or Firm affiliate, relying on the Exemption must be carried by an OTP Holder or OTP Firm with which it is affiliated. An OTP Holder or OTP Firm carrying an account that includes an equity option position for an affiliate that intends to rely on the Exemption would be required to obtain from such affiliate a written certification that it is using a permitted pricing model as defined in the rule for purposes of the Exemption.[22]

Reporting. Under proposed Rule 6.8 Commentary .09(f) each OTP Holder or OTP Firm relying on the Exemption would be required to report, in accordance with Rule 6.6,[23] (i) all equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to proposed Rule 6.8 Commentary .09(d), for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Rule 6.8(a) Commentary .05–06, the net delta and the options contract equivalent of the net delta of such position.

The Exchange and other self-regulatory organizations are working on modifying the Large Options Position Report system and/or OCC reports to allow a member organization to indicate that an equity options position is delta neutral.

Records. Under proposed Rule 6.8 Commentary .09(g) each OTP Holder or OTP Firm relying on the Exemption would be required to (i) retain, and would be required to undertake reasonable efforts to ensure that any affiliate of the OTP Holder or OTP Firm relying on the exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.[24]

Reliance on Federal Oversight. As provided under proposed Rule 6.8 Commentary .09(c) a permitted pricing model includes proprietary pricing models used by OTP Holders and OTP Firms (and affiliates thereof) that have been approved by the Commission, the FRB, or another federal financial regulator. In adopting the proposed Exemption, the Exchange would be

regulator'' means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the OTP Holder or OTP Firm (or affiliate thereof) relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. *See* subsection (c)(3) of proposed Rule 6.8 Commentary .09.

[15] The pricing model of a Commission-registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to Rules 15c3–1 and 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including an OTP Holder or OTP Firm) would be able to rely on this part of the Exemption. *See* subsection (c)(4) of proposed Rule 6.8 Commentary .09.

[16] The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including an OTP Holder or OTP Firm) would be able to rely on this part of the Exemption. *See* subparagraph (c)(5) of proposed Rule 6.8 Commentary .09.

[17] For purposes of the proposed rule, ''control'' is as defined in *Position and Exercise Limits*, NYSE Arca Regulatory Bulletin RBO–07–08 (August 31, 2007).

[18] *See* subsection (d) of proposed Rule 6.8 Commentary .09.

[19] *See supra* note 17.

[20] *See* subparagraph (d)(3) of proposed Rule 6.8 Commentary .09.

[21] *See* subsection (e) of proposed Rule 6.8 Commentary .09.

[22] In addition, the OTP Holder or OTP Firm would be required to obtain from such affiliate a written statement confirming that such affiliate: (a) Is relying on the Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Exemption; (c) will promptly notify the affiliated OTP Holder or OTP Firm if it ceases to rely on the Exemption; (d) authorizes the OTP Holder or OTP Firm to provide to the Exchange or the OCC such information regarding positions of the affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Exemption; and (e) if the affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. *See* subparagraph (e)(3) of proposed Rule 6.8 Commentary .09.

[23] NYSE Arca Rule 6.6 requires, among other things, that OTP Holders and OTP Firms report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

[24] An OTP Holder or OTP Firm would be authorized to report position information of its affiliate pursuant to the written statement required under proposed Rule 6.8 Commentary .09(e)(3)(ii)(d).

relying upon the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether an OTP Holder or OTP Firm or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

This rule change will become effective upon filing, although it will not become operative until such time that the Exchange, the OCC, and the Securities Industry Automation Corporation (''SIAC'') have completed required technology changes to automated reports used for position limit surveillance. The operative date for the rule change will be announced by NYSE Arca via an options regulatory bulletin, within 30 days following the effective date of the filing. OTP Firms and OTP Holders will not be able to take advantage of the delta neutral-based equity hedge exemption contained in this proposal until the announced operative date.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Section 6(b)(5) of the Act,[26] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[27]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (S7–30–97) (adopting rules relating to OTC Derivatives Dealers).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 [28] and Rule 19b–4(f)(6) thereunder.[29]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[30] However, Rule 19b–4(f)(6)(iii) [31] 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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to implement the delta hedging exemption from equity options position limits without needless delay. The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated.[32] The Commission believes that NYSE Arca's proposal to create a delta hedging exemption from equity options position limits raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[33]

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6).

[30] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

[31] *Id.*

[32] *See* Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR–CBOE–2007–99).

[33] 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).

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–17. 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 NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR–NYSEArca–2008–17 and should be submitted on or before March 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3844 Filed 2–28–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57377; File No. SR–NYSE Arca–2008–19]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.31 To Modify the Primary Only Order Type

February 25, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by NYSE Arca. NYSE Arca filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

NYSE Arca proposes to amend Rule 7.31(x) in order to modify the permissible order entry time and eligibility of its Primary Only Order (''PO Order''). The text of the proposed rule change is available at NYSE Arca, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities rule 7.31(x) to modify the operability and eligibility of PO Orders in order to provide additional flexibility and increased functionality to its system and its Users.[5]

The PO Order is a market or limit order that is routed to the primary, listing market, without sweeping the NYSE Arca book.[6] PO Orders may be entered until a cut-off time as determined from time to time by the Corporation. Presently, the Exchange restricts PO Orders to participation in the primary, listing market opening. In an effort to enhance order execution opportunities for its Users, the Exchange proposes to modify the PO Order type so that they may be entered at any time and to offer an order modifier for Users to designate PO Orders that are eligible for entry and execution throughout the trading day.

According to the proposal, a PO Order may be entered at any time[7]; and will be immediately routed to the primary, listing market for execution. If the order is not IOC, the order is not returned to the NYSE Arca book; rather it remains at the venue routed to, until executed or cancelled that day. In instances where a symbol is halted, the PO Order will remain at the primary, listing market until such time that it is cancelled or the symbol is re-opened. PO Orders eligible for participation in the primary, listing market's opening must be entered before 6:28 a.m. (Pacific Time). A PO Order entered for participation in the primary, listing market re-opening after a trading halt must be entered after trading was halted on the Corporation and before the Re-Opening Time. Otherwise, PO Orders eligible for participation in the primary, listing market at all other times must be marked with the modifier: PO+.

The proposed changes to the PO Order type will provide additional flexibility and functionality to the Exchange's system and its Users that wish to use the system to comply with their obligations to avoid trading through any Protected Quotation within the meaning of Rule 600(b)(58) of Regulation NMS.[8] PO Orders may be designated as intermarket sweep orders thereby providing the entering party the ability to trade-through any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act) and to execute at the primary, listing market. Of course, a broker-dealer that designates an order as an intermarket sweep order has the responsibility of complying with Rules 610 and 611 of Regulation NMS.

The Exchange believes that the proposed clarification and additional modifier will enhance flexibility and order execution opportunities for its Users. The Exchange also believes that the proposed amendments will also allow its Users to comply with their obligation to avoid trading through any protected bid or offer within the meaning of Rule 600(b) of Regulation NMS. In addition, the Exchange believes that the proposed functionality is substantially similar to the ''Directed Orders'' presently offered by The NASDAQ Stock Market LLC (''Nasdaq'').[9]

2. Statutory Basis

The proposed rule change is consistent with the provisions of section 6 of the Act,[10] in general, and with sections 6(b)(1) and (b)(5) of the Act,[11] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca does not believe that the proposed rule change will impose any

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* NYSE Arca Rule 1.1(yy) for the definition of ''User.''

[6] NYSE Arca Rule 7.31(x).

[7] Users would be able to enter PO Orders into the system for execution during any of the Exchange's trading sessions (Opening, Core and Late Sessions).

[8] 17 CFR 242.600(b)(58).

[9] *See* Securities Exchange Act Release No. 55405 (March 6, 2007), 72 FR 11069 (March 12, 2007) (SR–NASDAQ–2007–020).

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(1) and (b)(5).

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[14] However, Rule 19b–4(f)(6)(iii) [15] 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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[16] The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2008–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–19. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–19 and should be submitted on or before March 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. NYSE Arca has complied with this requirement.

[15] *Id.*

[16] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57359; File No. SR–Phlx–2008–07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create a Delta Hedging Exemption From Equity Options Position Limits

February 20, 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 February 12, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Phlx. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1001 to establish a delta hedge exemption from equity options position limits.[5] The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and *http://www.phlx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[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] The proposed filing is being done pursuant to an industry-wide initiative, under the auspices of the Intermarket Surveillance Group (''ISG''), to establish comparable delta hedge exemption rules among exchanges. ISG is a regulatory information-sharing organization comprised of all U.S. national securities exchanges and national securities associations, most U.S. futures exchanges, and non-U.S. exchanges and associations trading securities and related products.

rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit expanded hedge positions pursuant to a carefully crafted delta hedge exemption from equity options position limits in Phlx Rule 1001.

Background. All options traded on the Exchange are subject to position and exercise limits, as provided under Phlx Rules 1001 and 1002, respectively.[6] Position limits are imposed, generally, to maintain fair and orderly markets for options and other securities by limiting the amount of control one or more affiliated persons or entities may have over one particular options class or the security or securities that underlie that options class.

Over the years, Phlx has increased the size of options position and exercise limits, as well as the size and scope of available hedge exemptions to the applicable position limits.[7] These hedge exemptions generally require a one-to-one hedge (*e.g.*, one stock option contract must be hedged by the number of shares underlying the options contract, typically 100 shares). In practice, however, many firms do not hedge their options positions in this manner. Instead, these firms engage in what is commonly known as ''delta hedging.'' Delta hedging varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying security.[8] The Exchange believes that delta hedging is a widely accepted method for risk management.

Delta Neutral-Based Equity Hedge Exemption. The Exchange proposes to adopt a new exemption from equity options position and exercise limits[9] for positions held by Phlx members and certain of their affiliates that are ''delta neutral''[10] under a ''permitted pricing model'' (as defined below), subject to certain conditions (''Exemption''). The proposed Exemption would apply only to equity options (stock options and options on exchange-traded funds (''ETFs'')).[11]

Any equity option position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the ''option contract equivalent of the net delta'' of such position would be subject to the appropriate position limit.[12]

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position's net delta or whether the options position is delta neutral. In addition, members could not use the same equity or other financial instrument position in connection with more than one hedge exemption. Therefore, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, must be made using a permitted pricing model. A ''permitted pricing model'' is defined in proposed Commentary .09(c) to mean the pricing model maintained and operated by The Options Clearing Corporation (''OCC'') and the pricing models used by: (i) A member or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3–1 under the Act; (ii) a financial holding company (''FHC'') or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision;[13] (iii) a Commission-registered OTC derivatives dealer;[14] and (iv) a national bank.[15]

Aggregation of Accounts. Members and non-member affiliates relying on the Exemption would be required to ensure that the permitted pricing model is applied to all positions in or relating to the security underlying the relevant options position that are owned or controlled by the member, or its affiliates.

However, the net delta of an options position held by an entity entitled to rely on the Exemption, or by a separate

[6] Position and exercise limits for index options are provided separately under Phlx Rules 1001A and 1002A.

[7] *See* Securities Exchange Act Release Nos. 51071 (January 21, 2005), 70 FR 4911 (January 31, 2005) (SR–Phlx–2005–05); 55285 (February 13, 2007), 72 FR 8053 (February 22, 2007) (SR–Phlx–2007–10); 45899 (May 9, 2002), 67 FR 34980 (May 16, 2002) (SR–Phlx–2002–33); 42386 (February 4, 2000), 65 FR 6680 (February 10, 2000) (SR–Phlx–98–55); and 40400 (September 3, 1998), 63 FR 48777 (September 11, 1998) (SR–Phlx–98–36).

[8] To illustrate, a stock option contract with a delta of .5 will move $0.50 for every $1.00 move in the underlying stock.

[9] Phlx Rule 1002 establishes exercise limits for an option at the same level as the option's position limit under Phlx Rule 1001; therefore, no changes are proposed to Rule 1002.

[10] The term ''delta neutral'' is defined in proposed Commentary .09(a) to Phlx Rule 1001 as referring to an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change with incremental changes in the price of the security underlying the option position.

[11] The Exchange intends to submit a separate proposed rule change, in conjunction with an industry initiative, to adopt a delta neutral-based hedge exemption for certain index options and to expand the delta neutral-based hedge exemption for ETF options to allow highly correlated instruments to be included in any ETF option net delta calculation.

[12] Under proposed Commentary .09(b) to Phlx Rule 1001, the term ''options contract equivalent of the net delta'' is defined as the net delta divided by the number of shares underlying the option contract, and the term ''net delta'' is defined as, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model.

[13] The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) The requirements of the Board of Governors of the Federal Reserve System (''Fed''), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Fed, provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where ''principal regulator'' means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the member or affiliate of a member relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. *See* proposed Commentary .09(c)(3) to Phlx Rule 1001.

[14] The pricing model of a Commission-registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to Rule 15c3–1 and Rule 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* proposed Commentary. 09(c)(4) to Phlx Rule 1001.

[15] The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a member) would be able to rely on this part of the Exemption. *See* proposed Commentary .09(c)(5) to Phlx Rule 1001.

and distinct trading unit of such entity, may be calculated without regard to positions in or relating to the security underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that: (i) The entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in Commentary .06 to Phlx Rule 1001, exists between such affiliates or trading units, and (ii) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Exemption.[16]

The Exchange has set forth, in Phlx Memorandum No. 0025–08 (''Aggregation Memo''), the conditions under which it will deem no control relationship to exist between affiliated broker-dealers, and between separate and distinct trading units within the same broker-dealer. Subsequent to this proposal the Exchange intends to update the Aggregation Memo to clarify the inclusion of affiliated entities, not only affiliated broker-dealers as in the current version of the Aggregation Memo.

Any member or non-member affiliate relying on the Exemption must designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Exemption for purposes of compliance with Exchange position or exercise limits.[17]

Obligations of Members and Affiliates. Any member relying on the Exemption would be required to provide a written certification to the Exchange that it is using a permitted pricing model as defined in the rule for purposes of the Exemption. In addition, by such reliance, such member would authorize any other person carrying for such member an account including, or with whom such member has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this exemption.[18]

The options positions of a non-member affiliate relying on the Exemption must be carried by a member with whom it is affiliated. A member carrying an account that includes an equity option position for a non-member affiliate that intends to rely on the Exemption would be required to obtain from such non-member affiliate a written certification that it is using a permitted pricing model as defined in the rule for purposes of the Exemption.[19]

Reporting. Under proposed Commentary .09(f) to Phlx Rule 1001, each member relying on the Exemption would be required to report, in accordance with Phlx Rule 1003,[20] (i) all equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to Commentary .09(d), for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Phlx Rule 1001, the net delta and the options contract equivalent of the net delta of such position.

The Exchange and other self-regulatory organizations are working on modifying the Large Options Position Report (''LOPR'') system and/or OCC reports to allow a member to indicate that an equity options position is delta neutral.

Records. Under proposed Commentary .09(g) to Phlx Rule 1001, each member relying on the Exemption would be required to (i) retain, and would be required to undertake reasonable efforts to ensure that any non-member affiliate of the member relying on the exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.[21]

Reliance on Federal Oversight. As provided under proposed Commentary .09(c) of Phlx Rule 1001, a permitted pricing model includes proprietary pricing models used by members and affiliates that have been approved by the Commission, the Fed or another federal financial regulator. In adopting the proposed Exemption, the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

The Exchange will announce the operative date of the proposed rule change in a regulatory circular to be published no later than 30 days after the Commission issues a release regarding the proposal herein. The operative date shall be no later than 15 days after publication of the regulatory circular.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[24]

[16] *See* proposed Commentary .09(d) to Phlx Rule 1001.

[17] *See* proposed Commentary .09(d)(3) to Phlx Rule 1001.

[18] *See* proposed Commentary .09(e) to Phlx Rule 1001.

[19] In addition, the member would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) Is relying on the Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Exemption; (c) will promptly notify the member if it ceases to rely on the Exemption; (d) authorizes the member to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under the Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. See proposed Commentary .09(e)(3)(ii) to Phlx Rule 1001.

[20] Phlx Rule 1003 requires, among other things, that members report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

[21] A member would be authorized to report position information of its non-member affiliate pursuant to the written statement required under proposed Commentary .09(e)(3)(ii) to Phlx Rule 1001.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (S7–30–97) (adopting rules relating to OTC Derivatives Dealers).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

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 [25] and Rule 19b–4(f)(6) thereunder.[26]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[27] However, Rule 19b–4(f)(6)(iii) [28] 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. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to implement the delta hedging exemption from equity options position limits without needless delay. The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated.[29] The Commission believes that Phlx's proposal to create a delta hedging exemption from equity options position limits raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[30]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2008–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–07. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–07 and should be submitted on or before March 21, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3843 Filed 2–28–08; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

[28] *Id.*

[29] *See* Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR–CBOE–2007–99).

[30] 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).

[31] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11176 and #11177]

Alabama Disaster Number AL–00012

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Alabama dated 02/21/2008.

Incident: Severe storm and tornadoes.

Incident Period: 02/05/2008 through 02/06/2008.

DATES: *Effective Date:* 02/21/2008.

Physical Loan Application Deadline Date: 04/21/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 11/21/2008.

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: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Lawrence Walker

Contiguous Counties:

Alabama: Blount, Colbert, Cullman, Fayette, Franklin, Jefferson, Lauderdale, Limestone, Marion, Morgan, Tuscaloosa, Winston

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11176 C and for economic injury is 11177 0.

The State which received an EIDL Declaration # is Alabama.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 21, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–3847 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11174 and #11175]

Alabama Disaster Number AL–00013

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ALABAMA dated 02/21/2008.

Incident: Severe Storms and Tornadoes.

Incident Period: 02/17/2008.

DATES: *Effective Date:* 02/21/2008.

Physical Loan Application Deadline Date: 04/21/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 11/21/2008.

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: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Autauga Autauga

Contiguous Counties:

Alabama: Chilton, Dallas, Elmore, Lowndes, Montgomery

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11174 C and for economic injury is 11175 0.

The State which received an EIDL Declaration # is Alabama.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 21, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–3849 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11166]

Arkansas Disaster Number AR–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 Arkansas (FEMA–1744–DR), dated 02/07/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 02/05/2008 and continuing.

DATES: *Effective Date:* 02/20/2008.

Physical Loan Application Deadline Date: 04/07/2008.

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 Arkansas, dated 02/07/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Newton

Marion

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. E8–3855 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11169 and #11170]

Arkansas Disaster Number AR–00015

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1744–DR), dated 02/08/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 02/05/2008 and continuing through 02/12/2008.

DATES: *Effective Date:* 02/12/2008.

Physical Loan Application Deadline Date: 04/08/2008.

EIDL Loan Application Deadline Date: 11/10/2008.

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 Arkansas, dated 02/08/2008 is hereby amended to establish the incident period for this disaster as beginning 02/05/2008 and continuing through 02/12/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–3856 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11166]

Arkansas Disaster Number AR–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 ARKANSAS (FEMA–1744–DR), dated 02/07/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 02/05/2008 through 02/12/2008.

DATES: *Effective Date:* 02/12/2008.

Physical Loan Application Deadline Date: 04/07/2008.

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 ARKANSAS, dated 02/07/2008, is hereby amended to establish the incident period for this disaster as beginning 02/05/2008 and continuing through 02/12/2008.

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. E8–3857 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11169 and #11170]

Arkansas Disaster Number AR–00015

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 Arkansas (FEMA–1744–DR), dated 02/08/2008.

Incident: Severe storms, tornadoes, and flooding.

Incident Period: 02/05/2008 and continuing.

DATES: *Effective Date:* 02/20/2008.

Physical Loan Application Deadline Date: 04/08/2008.

EIDL Loan Application Deadline Date: 11/10/2008.

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 Presidential disaster declaration for the State of Arkansas , dated 02/08/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Marion, Union.

Contiguous Counties:

Arkansas: Ashley, Boone, Bradley, Calhoun, Columbia, Ouachita.

Louisiana: Claiborne, Morehouse, Union.

Missouri: Taney.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–3860 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11160 and #11161]

Indiana Disaster Number IN–00017

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1740–DR), dated 01/30/2008.

Incident: Severe Storms and Flooding.

Incident Period: 01/07/2008 and continuing.

DATES: *Effective Date:* 02/21/2008.

Physical Loan Application Deadline Date: 03/31/2008.

EIDL Loan Application Deadline Date: 10/30/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 4925 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 Presidential disaster declaration for the State of INDIANA dated 01/30/2008is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties:

Allen, Benton, De Kalb, Huntington, Kosciusko, Lake, La Porte, Newton, Noble, St. Joseph, Starke, Whitley.

Contiguous Counties:

Illinois: Cook, Iroquois, Kankakee, Vermilion, Will.

Indiana: Adams, Grant, Steuben, Wells.

Michigan: Berrien.

Ohio: Defiance, Paulding, Van Wert, Williams.

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. E8–3851 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11178 and #11179]

Kentucky Disaster Number KY–00013

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1746–DR), dated 02/21/2008.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding

Incident Period: 02/05/2008 through 02/06/2008

DATES: *Effective Date:* 02/21/2008

Physical Loan Application Deadline Date: 04/21/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 11/21/2008.

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: Notice is hereby given that as a result of the President's major disaster declaration on 02/21/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Allen, Christian, Fayette, Hardin, Hart, Meade, Mercer, Monroe, Muhlenberg.

Contiguous Counties (Economic Injury Loans Only):

Kentucky: Anderson, Barren, Bourbon, Boyle, Breckinridge, Bullitt, Butler, Caldwell, Clark, Cumberland, Edmonson, Garrard, Grayson, Green, Hopkins, Jefferson, Jessamine, Larue, Logan, Madison, Mclean, Metcalfe, Nelson, Ohio, Scott, Simpson, Todd, Trigg, Warren, Washington, Woodford.

Indiana: Crawford, Harrison, Perry.

Tennessee: Clay, Macon, Montgomery Stewart, Sumner.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The Number Assigned to this Disaster for Physical Damage is 11178C and for Economic Injury Is 111790.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–3870 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11167 and #11168]

Tennessee Disaster Number TN–00018

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 Tennessee (FEMA–1745–DR), dated 02/07/2008.

Incident: Severe Storms, Tornadoes, Straight-Line Winds, and Flooding.

Incident Period: 02/05/2008 through 02/06/2008.

DATES: *Effective Date:* 02/20/2008.

Physical Loan Application Deadline Date: 04/07/2008.

EIDL Loan Application Deadline Date: 11/07/2008.

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 Presidential disaster declaration for the State of Tennessee dated 02/07/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Fayette.

Contiguous Counties:

Mississippi: Benton.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E8–3859 Filed 2–28–08; 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, 5 U.S.C. Appendix 2, section 10(a)(2), notice is hereby given that the U.S. Small Business Administration's (SBA), National Small Business Development Center (SBDC) Advisory Board, will be hosting a public board meeting to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration. The meeting is scheduled for Tuesday, March 4, 2008 from 8:30 a.m. to 4 p.m. Eastern Standard Time at the SBA Office of Small Business Investment Companies (SBIC) Conference Room, 6th Floor, 409 Third Street, SW., Washington, DC 20416.

The purpose of the meeting is to meet with and welcome a new board member and to facilitate board briefings with the Administrator, senior staff, and SBA program offices.

The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend the meeting must contact Alanna Falcone by Friday, February 29, 2008 by e-mail at *alanna.falcone@sba.gov* or fax (202) 481–0134. Shorter than usual notice is being provided by SBA in order for the SBDC Advisory Board to convene during the same week as other meetings and conferences which will bring a substantial representation from the SBA SBDC grantee community to the DC area.

Cherylyn LeBon,

Assistant Administrator for Intergovernmental Affairs, SBA Committee Management Officer.

[FR Doc. E8–3872 Filed 2–28–08; 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, 5 U.S.C. Appendix 2, section 10(a)(2), notice is hereby given that the U.S. Small Business Administration's (SBA) National Small Business Development Center Advisory Board will be hosting a public meeting via conference call. The meeting is scheduled for Tuesday, March 18, 2008 at 1 p.m. Eastern Standard Time.

The purpose of this meeting is to discuss the follow-up issues from a March 4, 2008 Board meeting and an ASBDC Spring Conference on March 3–7, 2008 in Washington, DC.

The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend the meeting or make an oral presentation to the board must contact Alanna Falcone by Monday, March 17, 2008 by e-mail

at *alanna.falcone@sba.gov* or fax to (202) 481–0134, for the conference call phone number and passcode.

Cherylyn LeBon,

Assistant Administrator for Intergovernmental Affairs, SBA Committee Management Officer.

[FR Doc. E8–3876 Filed 2–28–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov*.

(SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov.*

The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Agreement to Sell Property—20 CFR 416.1240–1245—0960–0127. Individuals or couples who are otherwise eligible for Supplemental Security Income (SSI) benefits but whose resources exceed the allowable limit may receive conditional payments if they agree to dispose of the excess non-liquid resources and make repayment. SSA uses form SSA–8060 to document this agreement and to ensure the individuals understand their obligations. Respondents are applicants for and recipients of SSI benefits who will be disposing of excess non-liquid resources.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

2. Listing of Impairments—Part 404, Subpart P, Appendix I and II—0960–0642.

Background

The Listing of Impairments (the listings), Part 404, Subpart P, Appendix I and II, describes, for each of the major body systems, impairments which are severe enough to prevent a person from doing any gainful activity. As part of the listings, we provide a preface identifying specific requirements which affect the body system, such as documentation requirements and other factors to consider when evaluating impairments within that body system, including medical and other evidence. This clearance request covers Appendix 1 to Subpart P of part 404.

The Information Collection

State Disability Determination Services (DDS) use the documented medical evidence described in the listings to assess the alleged disability. DDS use this information, together with other evidence, to determine if an individual claiming disability benefits has an impairment that meets severity and duration requirements. The respondents are disability applicants and other sources of evidence. The Information Collection Requests for the various forms the public uses to submit medical and other evidence to SSA includes the burden imposed by these regulations. We are reporting no burden for this regulation aside from a 1-hour placeholder burden.

Type of Request: Extension of an OMB-approved information collection.

3. Reporting Events-SSI—20 CFR 416.701–.732—0960–0128. SSI applicants, recipients, and/or their representative payees must report any changed circumstances that could affect their eligibility for SSI payments or the payment amount. SSA uses the information, reported on Form SSA–8150, to determine if SSI benefits should continue or if the payment amount should be changed. The respondents are applicants for or recipients of SSI benefits or their representative payees.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 27,320.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 2,277 hours.

4. Application for a Social Security Card—20 CFR 422.103–.110—0960–0066. SSA collects information on Forms SS–5 (used in the United States) and SS–5–FS (used outside the United States) to issue original or replacement Social Security cards. SSA is revising the race/ethnicity question on the forms to comply with Office of Management and Budget standards. Additionally, SSA is making several other minor changes to the form's instructions. The respondents are applicants for original and replacement Social Security cards.

Type of Request: Revision to an OMB approved information collection.

Application scenario	Number of annual respondents	Completion time (minutes)	Burden hours
Respondents who do not have to provide parents' social security numbers (SSNs)	13,000,000	8½	1,841,667
Respondents who are asked to provide parents' SSNs (for application for original SSN cards for children under age 18)	540,000	9	81,000

Application scenario	Number of annual respondents	Completion time (minutes)	Burden hours
Applicants age 12 or older who need to answer additional questions so SSA can determine whether an SSN was previously assigned	40,000	9½	6,333
Applicants asking for a replacement SSN card beyond the new allowable limits (i.e., who must provide additional documentation to accompany the application)	4,000	60	4,000
Totals	13,584,000	.....	1,933,000

Dated: February 25, 2008.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E8–3871 Filed 2–28–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6113]

Advisory Committee on International Postal and Delivery Services

AGENCY: Department of State.

ACTION: Notice; FACA Committee meeting announcement.

Summary: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of the inaugural meeting of the Advisory Committee on International Postal and Delivery Services. This Committee has been formed in fulfillment of the provisions of the 2006 Postal Accountability and Enhancement Act (Pub. L. 109–435) and in accordance with the Federal Advisory Committee Act.

Public input: Any member of the public interested in providing public input to the meeting should contact Mr. Chris Wood, whose contact information is listed under **FOR FURTHER INFORMATION CONTACT** section of this notice. Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speaker list must be received in writing (letter, e-mail or fax) prior to the close of business on March 18, 2008; written comments from members of the public for distribution at this meeting must reach Mr. Wood by letter, e-mail or fax by this same date.

Agenda of the Meeting

The agenda will include the following subjects:

—Preparations for U.S. participation in the UPU Congress to take place in Geneva from July 23 to August 12, 2008.

—Extra-territorial offices of exchange (ETOEs).

—Performance measurement.

—Customs clearance.

Date: March 25, 2008 from 2 p.m. to about 5 p.m. (open to the public).

Location: Room 1482, George C. Marshall Conference Center, Department of State, 2201 C Street, NW., Washington, DC 20520. Individuals attending the Committee meeting should enter the State Department at the 21st Street entrance, where photo identification will be required to be displayed to Diplomatic Security before entering the building. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U.S. Government identification card, or any valid passport.

For further information, please contact Christopher Wood, Office of Technical Specialized Agencies (IO/T), Bureau of International Organization Affairs, U.S. Department of State, at (202) 647–1044, *woodcs@state.gov.*

Dated: February 21, 2008.

Dennis M. Delehanty,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services.

Dated: February 21, 2008.

Dennis M. Delehanty,

Foreign Affairs Officer, Department of State.

[FR Doc. E8–3939 Filed 2–28–08; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF TRANSPORATION

Federal Highway Administration

Environmental Impact Statement; Washoe County, NV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Washoe County, NV.

FOR FURTHER INFORMATION CONTACT: Mr. Abdelmoez Abdalla, Environmental Project Manager, Federal Highway Administration, 705 North Plaza Street, Suite 220, Carson City, Nevada 89701–0602, Telephone: (775) 687–1231; Mr. Steve Cooke, Chief, Environmental Service Division, Nevada Department of Transportation (NDOT), 1263 S. Stewart Street, Carson City, Nevada 89712, Telephone: (775) 888–7686; or Mr. Doug Maloy, Project Manager, Regional Transportation Commission (RTC), 1105 Terminal Way, Suite 108, Reno, Nevada 89502, Telephone: (775) 335–1865.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the NDOT, will prepare an Environmental Impact Statement (EIS) on a proposal to improve Pyramid Way (SR 44) from Queen Way to Calle de la Plata Drive and a proposal for a new corridor from Vista Boulevard to US-395 near the Parr/Dandini Interchange in Washoe County, Nevada. The FHWA will serve as the Lead Federal agency while the NDOT and the RTC will serve as Joint Lead Agencies. The new SAFETEA–LU environmental review process will be followed.

The purpose of the proposed project is to address regional mobility, congestion, and safety challenges faced by motorists and pedestrians that travel Pyramid highway to Spanish Springs and Pyramid Lake. Improvements to the existing corridor (Pyramid Highway) are considered necessary to provide for the existing and projected traffic demand. There will be a ''No Build Alternative'' and ''Build Alternatives'' developed that may include improvements to existing Pyramid Highway from Queen Way to Calle de la Plata and a possible new roadway between US–395 and Vista Boulevard.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping meeting will be held later this year or early next year. Public notice will be

given of the time and place of the meeting.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 42 U.S.C. 4321 *et seq.*, 49 CFR 1.48(d)(17), and 40 CFR 1501.7.

Issued on: February 20, 2008.

Susan E. Klekar,

Division Administrator, Federal Highway Administration, Nevada Division, Carson City, Nevada.

[FR Doc. 08–885 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Winston-Salem Northern Beltway, Forsyth County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, the Winston-Salem Northern Beltway, from U.S. 158 southwest of Winston-Salem to U.S. 311 southeast of Winston-Salem in Forsyth County, North Carolina. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 27, 2008. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, P. E., Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Ste 410, Raleigh, North Carolina, 27601–1418; Telephone: (919) 747–7014; e-mail: *clarence.coleman@fhwa.dot.gov*. FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). You may also contact Gregory J. Thorpe, PhD, Project Development and Environmental Analysis Branch Manager, North Carolina Department of Transportation (NCDOT), 1 South Wilmington Street (Delivery), 1548 Mail Service Center, Raleigh, North Carolina 27699–1548; Telephone (919) 733–3141, *gthorpe@dot.state.nc.us*. NCDOT—Project Development and Environmental Analysis Branch Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: the Winston-Salem Northern Beltway, Forsyth County, North Carolina. The proposed action would be the construction of a 34.2-mile multi-lane divided, controlled access highway on new location from U.S. 158 southwest of Winston-Salem to U.S. 311 southeast of Winston-Salem in Forsyth County, North Carolina. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Supplemental Final Environmental Impact Statement (Western Section)/Final Environmental Impact Statement (Eastern Section and Eastern Section Extension) (SFEIS/FEIS) for the project, approved on January 11, 2007, in the FHWA Record of Decision (ROD) issued on February 15, 2008, and in other documents in the FHWA administrative record. The SFEIS/FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or NCDOT at the addresses provided above. The FHWA SFEIS/FEIS and ROD can be viewed at the NCDOT—Project Development and Environmental Analysis Branch, 1 South Wilmington Street, Raleigh, North Carolina; NCDOT—Division 9 Office, 375 Silas Creek Parkway, Winston-Salem, North Carolina and the Winston-Salem Department of Transportation, City Hall South, 101 East First Street, Room 307, Winston-Salem, North Carolina.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)-757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with

Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: February 22, 2008.

Clarence W. Coleman,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. E8–3878 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Rural Safety Innovation Program

AGENCY: Federal Highway Administration (FHWA), (DOT).

ACTION: Notice of solicitation for applications to enter into agreements with the U.S. Department of Transportation (DOT or the ''Department'') for funding to support qualified Rural Safety Innovation Program projects.

SUMMARY: The goal of the Rural Safety Innovation Program is to improve rural road safety by assisting rural communities in addressing highway safety problems and by providing rural communities the opportunity to compete for project funding to address these problems. The program will encourage States and rural communities to develop creative, locally crafted solutions to roadway safety problems, document their efforts and outcomes, and share the results with other communities across the country.

Through the Rural Safety Innovation Program, the Department aims to heighten awareness and interest in rural safety issues, and promote the benefits of rural safety countermeasures which can reduce rural crashes and fatalities nationwide. By providing technical assistance and best practice guidance from the program we will give States and rural road owners better tools to improve road safety in their communities.

The primary objectives of the Rural Safety Innovation Program are to:

i. Improve safety on local and rural roads with innovative approaches in which rural communities develop and design local solutions to their roadway safety problems.

ii. Provide best practices and lessons learned on innovative safety technologies to assist local and rural road owners and operators in the development and implementation of infrastructure-based rural safety countermeasures that complement behavioral safety efforts.

iii. Promote national awareness and interest in addressing rural safety issues.

iv. Promote the use of Intelligent Transportation Systems (ITS) technologies to improve safety on rural roads.

DATES: Applications must be received on or before April 14, 2008. Proposals for applications selected for potential funding will be due in June 2008.

ADDRESSES: Interested parties should submit Applications to Mr. John E. Dewar, State and Local Programs Team Leader, Federal Highway Administration (FHWA), Office of Safety, 1200 New Jersey Avenue, SE., Washington, DC 20590, electronically to *ruralsafetyinitiative@dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John E. Dewar, Federal Highway Administration, Office of Safety, (202) 366–2218, *john.dewar2@dot.gov,* 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing: An electronic copy of this document may be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/nara/index.html.*

A. Background

Rural roads account for approximately 40 percent of the vehicle miles traveled in the U.S., but almost 55 percent of fatalities. According to the latest data, 23,339 people were killed in rural crashes in 2006 and the fatality rate for rural crashes is more than twice the fatality rate in urban crashes. Over 75 percent of all U.S. road miles are rural, and of the over 3 million miles of rural roads, almost 80 percent are owned and operated by local entities. Head-on collisions are more frequent in rural areas, occurring about twice as often as in urban areas. Rural collector roads account for 31 percent of all rural road deaths, whereas urban collector roads account for only 8 percent of urban road deaths. Speeding is a common contributor to rural road deaths. Over 70 percent of the fatal crashes on high speed roadways (speed limit of 55 mph or higher) occurred in rural areas. The fatality rate per vehicle miles travel (VMT) on local roads is more than twice that of Interstates.

Getting infrastructure safety information and more effective countermeasure tools to State and local officials is critical to improving national rural road safety. There are over 3,000 counties and more than 16,000 towns and township governments in the U.S. that vary widely in the size of the engineering staff and their ability to design and implement infrastructure safety countermeasures on rural roads. Rural safety continues to be a significant national problem in the effort to reduce highway fatalities. Successful efforts to combat the rural safety problem require an interdisciplinary approach including engineering, enforcement, education and emergency medical services.

B. Funding

Currently, FHWA is proposing to use FY 2008 funds, drawn from available portions of the Delta Region Transportation Development Program, as well as the U.S. Department of Transportation Intelligent Transportation System (ITS) program for the Rural Safety Innovation Program. Each Federal funding source has unique criteria for eligible activities, eligible facilities/locations, and cost sharing that must be met. Awards will be made to rural projects that meet the eligibility criteria under one or both of these funding sources. Potential Applicants should review the eligibility requirements for each of the potential Federal funding sources described below before submitting an Application.

The FHWA's Delta Region Transportation Development Program supports and encourages multi-State transportation planning and corridor development, provides for transportation project development, facilitates transportation decisionmaking, and supports transportation construction on Federal-aid highways in the portions of the eight States comprising the Delta Regional Authority's region (Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee). Eligible projects must have the endorsement of the State Department of Transportation. Detailed information on Delta Region Transportation Development Program requirements can be found at *http://www.fhwa.dot.gov/planning/1308drtdp.htm.*

The U.S. Department of Transportation Intelligent Transportation Systems Program focuses on intelligent vehicles, intelligent infrastructure and the creation of an intelligent transportation system through integration with and between

these two components. Further information on potential safety application of ITS in rural areas can be found at:

Safety Applications of ITS in Rural Areas—*http://www.itsdocs.fhwa.dot.gov/jpodocs/repts_te/13609_files/Contents.htm.*

DOT ITS Web page—*http://www.its.dot.gov.*

DOT Highway Safety Web page—*http://safety.fhwa.dot.gov/.*

Benefits information—*http://www.itsbenefits.its.dot.gov/.*

Cost information—*http://www.itscosts.its.dot.gov/.*

Lessons learned—*http://www.itslessons.its.dot.gov/.*

Deployment information—*http://www.itsdeployment.its.dot.gov/SurveyOutline1.asp?SID=swcps.*

FHWA research—*http://www.tfhrc.gov/research.htm.*

We anticipate funding of $15 million or more to be available for the Rural Safety Innovation Program, drawn from the programs described above. Successful projects will demonstrate application of innovative technologies and approaches with significant potential for improving safety on eligible rural roads through infrastructure and technology improvements. Applicants must provide the appropriate match for the Federal funding source proposed.

It is estimated that competitive awards will be made in the range of $200 thousand to $2 million per project. The range is established to allow applicants the flexibility to respond as quickly as possible with appropriate new projects requiring modest funding and resources, or higher cost projects which may already be in development. Given the great expanse of rural roads, innovative approaches that may offer possible safety benefits at low costs are encouraged. Specific evaluation criteria are identified below.

C. Application Process

The selection process consists of two phases: Submission of a Rural Safety Innovation Program Application, followed by an invitation to submit a formal Proposal in Phase II. Each phase is discussed below.

i. *Phase I:* The Rural Safety Innovation Program is geared toward entities responsible for rural roads and highways such as counties, towns, townships and Tribal governments partnering with State departments of transportation. Applicants interested in the Rural Safety Innovation Program should submit a Rural Safety Innovation Program Application to the DOT. The length of the Application should not exceed ten, single-spaced pages. The Application should, in general terms, describe the proposed Rural Safety Innovation Program Project including its location, general project description, design and implementation outline, financial plan, management and staffing plan as well as a proposed project schedule. The Applicant may be requested to submit additional information if more information is needed at this stage. The deadline for submitting an Application is April 14, 2008.

If the Applicant is accepted for the final competition (Phase II), the Applicant will be invited to submit a Rural Safety Innovation Program Proposal, discussed below. The DOT intends to announce qualified Phase I candidates of the Rural Safety Innovation Program in early April 2008.

ii. *Phase II:* Rural Safety Innovation Program Proposal

If an Applicant is invited to submit a Rural Safety Innovation Program Proposal, the Proposal should be received no later than June 20, 2008. The Proposal should also reflect the support of all Federal, State, Local, and Tribal governments that operate facilities which will be directly impacted by the proposed rural safety project. The DOT intends to announce the Proposals selected for funding in August 2008.

Applicants invited to participate in Phase II will be given detailed guidelines needed to develop their Proposal. At a minimum, the Proposal should include a detailed project description including goals, objectives, location, proposed countermeasures, and expected benefits, a design and implementation plan, a financial plan, and a management and staffing plan including a detailed project schedule/timeline.

D. Eligibility Information

i. *Eligible applicants*—The Rural Safety Innovation Program is geared toward entities responsible for rural roads and highways such as counties, towns, townships and Tribal governments partnering with State departments of transportation. Coordination of proposals with the State Highway Safety Office is strongly encouraged. Letters of commitment should be submitted from the chief executive from each participating jurisdiction. Applicants must meet the eligibility requirements for the Federal funding source being proposed. Refer to section B. for links to potential Federal funding sources. If partnering with a local jurisdiction, the DOT should designate a local/rural safety coordinator who should be identified in the proposal. The coordinator should leverage the knowledge gained from the project with other safety initiatives, resources and data to provide safety assistance to local/rural communities statewide. Funding for the coordinator activities may be part of the match or submitted as a cost of the project.

ii. *Cost sharing or Matching*—Federal funds should not exceed 80 percent of the total project costs. Each recipient is responsible for identifying a minimum 20 percent matching share from other non-Federal sources. Applicants are encouraged to solicit matching funds from multiple sources, including, State and local governments and private sector partners, as they will be considered as evidence of local partnership. Applicants must meet the matching requirements for the Federal funding source being proposed. Refer to section B. for links to potential Federal funding sources.

iii. *Federal-aid Procedures*—The projects will be administered through the FHWA Division Offices and the State DOTs in accordance with their stewardship and oversight agreements, and the practices and procedures for local Federal-aid projects in the State, as applicable. Federal-aid requirements will apply. Examples of Federal-aid requirements include, but are not limited to, the transportation planning process, National Environmental Policy Act, Uniform Relocation Assistance Act, Equal Employment Opportunity, and Disadvantaged Business Enterprise requirements.

E. Contents of Application for Phase I

The Application should address each of the following:

i. *Content and Form of Application Submission*—Each application should include a brief Project Description, Design and Implementation Plan, Financial Plan, and Management Plan that describes how the proposed objectives will be met within the specified time frame and budget.

These brief plans should contain the following information:

A. Project Description

Describe local area/jurisdiction where the project will take place as well as a brief description of the project being proposed to include: Goals, objectives, proposed countermeasures, and expected benefits. Project proposals should include a strong rationale supported by quantifiable, location-specific data from either local, State, or Federal sources that identify a clear problem set and how the proposed

countermeasures would contribute as a potential solution.

The Department has identified a list of potential project types (below), for each crash category for consideration by applicants. Applications are not limited to these project types and innovative approaches are encouraged. However, projects should be consistent with the objectives of the Rural Safety Innovation Program.

1. Roadway Departure Crashes

- Dynamic curve warning systems.
- Advanced road departure warning systems.
- Innovative safety infrastructure improvements (i.e., cable guard rail, rumble strips and stripes).

2. Intersection and Pedestrian Crashes

- Intersection collision avoidance systems (i.e., sensors to provide oncoming traffic gap alerts, merge safety warnings, pedestrian and obstruction detection, variable safety signage).
- Innovative intersection treatments (i.e., roundabouts, continuous flow intersections).

3. Speeding Related Crashes

- Variable speed limit systems (with or without automated speed enforcement).
- Coordinated speed management systems.

4. Range of Crashes

- Roadway condition indicator/traveler information systems (i.e., ice detection/low friction, bridge deicing systems, poor visibility systems, road closure notification).
- Road side detection and warning systems.
- Work zone safety systems.
- Corridor safety applications.
- Innovative roadway safety data collection and analysis techniques.
- First Responder/Public Safety Services applications: Fire, Emergency Medical Services, Law Enforcement, HazMat, Towing, etc., that include vehicle tracking, automatic crash notification, telemedicine, and Wireless Enhanced 9–1–1 data transmission technologies.

B. Design and Implementation Outline

The Applicant should submit a brief statement outlining their potential Design and Implementation Plan. A detailed plan will only be required by those invited to submit a Proposal in Phase II.

C. Financial Plan

The Applicant should submit an initial plan that identifies potential sources of financing including the private partner's role, if applicable. Applicants must identify all funding and match sources being proposed, including the Federal funding source under this program. More than one Federal funding source may be identified if applicable. Refer to section B. for links to potential Federal funding sources.

D. Management and Staffing Plan

Describe briefly which organizations will lead the project, and how responsibilities for task completion will be shared among proposed project partners. The Application should also include a proposed project time-line with estimated start and completion dates for major elements of the proposed Rural Safety Innovation Program Project.

ii. *Safety Benefits*—The Applicant should provide a brief description of the potential safety benefits based on the countermeasures proposed.

iii. *Evaluation of Rural Safety Innovation Program Projects*—The Department will also coordinate the evaluation of the effectiveness of projects. An independent evaluation team will be hired by the Department to develop an evaluation plan, and to conduct and coordinate evaluation efforts. Funding recipients will be required to collect specified before and after data and information as a condition of receiving funding, and to facilitate the Department's evaluation efforts. Depending on the number of projects selected, the Department may conduct evaluations of only a subset of projects.

F. Evaluation Criteria

The Department has identified evaluation criteria that will be used to select Applications to advance to the Phase II—Proposal stage.

Main Evaluation Criteria

i. An active High Risk Rural Roads Program.

ii. An active Highway Safety Program that complements the proposed project, including enforcement, education and emergency medical services.

iii. Participation by the State Highway Safety Office.

iv. Ability to provide appropriate non-Federal match to Federal funds requested.

v. Ability to meet the criteria and requirements of the proposed Federal funding source. Refer to section B. for links to potential Federal funding sources.

vi. Sufficient data and analysis procedures to identify problem areas and appropriate countermeasures.

vii. Feasibility of proposal (risk level).

Additional Evaluation Criteria

i. Counties with highest number of rural fatalities.

ii. Demonstration of cost share with public and private sector partners to develop innovative and creative Rural Safety Innovation Program projects.

iii. Ability to demonstrate a significant benefit/cost ratio that will assist the Department in promoting rural safety throughout the United Sates.

iv. Relationship between percentage of rural roads owned and operated by local agencies and participation by these agencies.

v. Road Safety Audits used in project development and solutions.

vi. Use of market ready technologies (including ITS) and innovations for improving roadway safety.

vii. Inclusion of outreach and education plan (for both provider/user agencies and the public).

viii. Clarity and specificity of proposal.

ix. Qualifications and experience.

Issued on: February 21, 2008.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E8–3716 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: March 26, 2008, 11 a.m. to 2 p.m., Eastern Daylight Time.

PLACE: These meetings will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free numbers and pass codes needed to participate in these meetings by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified

Carrier Registration Board of Directors at (505) 827–4565.

Dated: February 25, 2008.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 08–916 Filed 2–27–08; 12:26 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2008–0009, Notice No. 1]

Establishment of an Emergency Relief Docket for Calendar Year 2008

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of establishment of public docket.

SUMMARY: On August 30, 2006, FRA published an Interim Final Rule (IFR) addressing the establishment of emergency relief dockets (ERD) and the procedures for handling petitions for emergency waivers of safety regulations. 71 FR 51517. The IFR provided that each year, FRA will establish an ERD for that year and publish a notice in the **Federal Register** identifying the docket number of the ERD for that year. This Notice announces the establishment of FRA's ERD for the current year (calendar year 2008). The designated ERD for calendar year 2008 is docket number FRA–2008–0009.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for further information regarding submitting petitions and/or comments to Docket No. FRA–2008–0009.

SUPPLEMENTARY INFORMATION: On August 30, 2006, FRA published an IFR addressing the establishment of ERD and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 71 FR 51517. As noted in the IFR, FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. The IFR added § 211.45 to subpart C of 49 CFR part 211 (49 CFR 211.45). Section 211.45(b) provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system and that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD for that year. This Notice No. 1 announces that the designated ERD for calendar year 2008 is docket number FRA–2008–0009.

As detailed in the IFR, if the FRA Administrator determines that an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. 70 FR 51518. In such an event, the FRA Administrator will issue a statement in the ERD indicating that the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its Web site *http://www.fra.dot.gov/*. Any party desiring relief from FRA regulatory requirements as a result of the emergency situation should submit a petition for emergency waiver in accordance with 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers in accordance with 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are found at 49 CFR 211.45(h).

Privacy

Anyone is able to search 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 (Volume 665, Number 7, Pages 19477–78). The statement may also be found at *http://www.dot.gov/privacy.html*.

Issued in Washington, DC, on February 25, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 08–889 Filed 2–28–08; 8:45 am]

BILLING CODE 4910–06–M

Corrections

Federal Register

Vol. 73, No. 41

Friday, February 29, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF EDUCATION

Notice Reopening the Deadline Date for the New Fiscal Year (FY) 2008 Awards; Personnel Development To Improve Services and Results for Children with Disabilities Program (CFDA No. 84.325T)

Correction

In notice document E8–3520 beginning on page 10008, in the issue of Monday, February 25, 2008, make the following correction:

On page 10008 in the third column, the subject line should read as set forth above.

[FR Doc. Z8–3520 Filed 2–28–08; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0976; FRL–8526–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Budget Trading Program

Correction

In rule document E8–2506 beginning on page 8197 in the issue of Wednesday, February 13, 2008, make the following correction:

On page 8200, in the third column, under heading **Subpart KK—Ohio**, in amendatory instruction 2., in the second line, ''(c)(141)'' should read ''(c)(142)''.

[FR Doc. Z8–2506 Filed 2–28–08; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57317; File No. SR–CBOE–2007–151]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to Linkage Fees

Correction

In notice document E8–3059 beginning on page 9377 in the issue of Wednesday, February 20, 2008, make the following correction:

On page 9377, in the third column, in the document headings, after the subject, should read ''February 12, 2008''.

[FR Doc. Z8–3059 Filed 2–28–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2007-0205; Airspace Docket No. 07-ANM-17]

Proposed Establishment of Class E Airspace; Walden CO

Correction

In proposed rule document E8–844, beginning on page 3431 in the issue of Friday, January 18, 2008, make the following correction:

§ 71.1 [Corrected]

On page 3432, in § 71.1, in the second column, in the eighth line, ''(Lat. 40°45′0″ N., long. 106°16′17″ W.)'' should read''(Lat.40°45′01″ N., long. 106°16′17″ W.)''.

[FR Doc. Z8–844 Filed 2–28–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2004–19856]

Pipeline Safety: Updated Notification of the Susceptibility to Premature Brittle–Like Cracking of Older Plastic Pipe

Correction

In notice document 07–4309 beginning on page 51301 in the issue of Thursday, September 6, 2007 make the following corrections:

1. On page 51302, in the second column, in the first paragraph, in the fourth line, ''county's'' should read ''country's''.

2. On the same page, in the second column, in the last paragraph, in the second line, ''future'' should read ''further''.

3. On the same page, in the third column, in the second full paragraph, in the 18th line, the phrase ''is used which'' should only appear once.

[FR Doc. C7–4309 Filed 2–28–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9378]

RIN 1545–BE35

Release of Lien or Discharge of Property

Correction

In rule document E8–1569 beginning on page 5741 in the issue of Thursday, January 31, 2008, make the following correction:

§301.6325–1 [Corrected]

On page 5742, in §301.6325–1, in the third column, in paragraph (5), in the third line, ''proof of full payment'' should read ''*proof of full payment*''.

[FR Doc. Z8–1569 Filed 2–28–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
February 29, 2008

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1000, 1005, 1006 et al.

Milk in the Appalachian, Florida and Southeast Marketing Areas; Tentative Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1005, 1006 and 1007

[AMS–DA–07–0059; AO–388–A22; AO–356–A43 and AO–366–A51; Docket No. DA–07–03–A]

Milk in the Appalachian, Florida and Southeast Marketing Areas; Tentative Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; tentative partial decision.

SUMMARY: This decision proposes to adopt on an interim final and emergency basis proposals that adjust the Class I pricing surface of the Appalachian, Southeast and Florida Federal milk marketing orders. In addition, this decision proposes to amend certain features of the diversion limit, touch-base standards and transportation credit provisions for the Appalachian and Southeast Federal milk marketing orders. Other proposals seeking to increase the maximum administrative assessment for the Appalachian, Florida and Southeast marketing orders is addressed in a separate decision. This decision requires determining if producers approve the issuance of the amended orders on an interim basis.

DATES: Comments must be submitted on or before April 29, 2008.

ADDRESSES: Comments (six copies) should be filed with the Hearing Clerk, United States Department of Agriculture, STOP 9200-Room 1031, 1400 Independence Avenue, SW., Washington, DC, 20250–1031. You may send your comments by the electronic process available at the Federal eRulemaking portal: *http://www.regulations.gov* or by submitting comments to *amsdairycomments@usda.gov*. Reference should be made to the title of the action and docket number.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branches, STOP 0231-Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This tentative decision proposes to immediately adopt amendments that: (1) Adjust the Class I pricing surface in each county within the geographical marketing areas of the Appalachian, Florida and Southeast marketing orders; (2) make diversion limit standards identical for the Appalachian and Southeast orders: 25 percent of deliveries to pool plants during the months of January, February, July, August, September, October and November, and 35 percent in the months of March, April, May, June and December; (3) reduce touch-base standards to one day each month for the Appalachian and Southeast orders; (4) add January and February as months when transportation credits are paid for the Appalachian and Southeast orders; (5) provide for the payment of transportation credits in the Appalachian and Southeast orders for full loads of supplemental milk; (6) provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits for the Appalachian and Southeast orders; and (7) increase the monthly transportation credit assessment from $0.20 per cwt to $0.30 per cwt in the Southeast order. Other proposals seeking to increase the maximum administrative assessment for the Appalachian, Florida and Southeast orders are addressed in a separate decision.

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the AMAA, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The AMAA provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During May 2007, the time of the hearing, there were 2,744 dairy farmers pooled on the Appalachian order (Order 5). For the Southeast order (Order 7), 2,924 dairy farmers were pooled on the order. For the Florida order (Order 6), 283 dairy farmers were pooled on the order. Of these, 2,612 dairy farmers in Order 5 (or 95.2 percent), 2,739 dairy farmers in Order 7 (or 94 percent) and 153 dairy farmers in Order 6 (or 54 percent) were considered small businesses.

During May 2007, there were a total of 36 plants associated with the Appalachian order (22 fully regulated plants, 10 partially regulated plants, 2 producer-handlers and 2 exempt plants). A total of 55 plants were associated with the Southeast order (33 fully regulated plants, 9 partially regulated plants, 2 producer-handlers and 11 exempt plants). A total of 25 plants were associated with the Florida order (13 fully regulated plants, 9 partially regulated plants, 1 producer-

handler and 2 exempt plants). The number of plants meeting small business criteria under the Appalachian, Southeast and Florida orders were 8 (or 22.2 percent), 18 (or 32.7 percent) and 11 (or 44 percent), respectively.

The amendments proposed to be adopted in this tentative decision provide for the temporary increase in Class I prices in the Appalachian, Southeast and Florida orders. The minimum Class I prices of the three southeastern orders, as with all other Federal milk marketing orders, are set by using the higher of an advance Class III or Class IV price as determined by the Department and adding a location-specific differential, referred to as a Class I differential. Minimum Class I prices charged to regulated handlers are applied uniformly to both large and small entities. Class I price increases would generate higher marketwide pool values in all three southeastern orders by approximately $18–19 million for the Appalachian order, approximately $17.5 million for the Southeast order and approximately $38 million for the Florida order. In estimating the impact on minimum prices paid to dairy farmers, blend prices will increase by approximately $0.26 per cwt for the Appalachian order, approximately $0.64 per cwt for the Southeast order, and $1.19 per cwt to $1.22 per cwt for the Florida order.

The amendments proposed to be adopted revise the Appalachian and Southeast orders by making the diversion limit standards for the orders identical—not to exceed 25 percent for the months of January, February, and July through November, and 35 percent for the months of March through June and for the month of December. Currently, the diversion limit standards of the Appalachian order for pool plants and cooperatives acting as handlers are not to exceed 25 percent for the months of July through November, and January and February; and 40 percent for the months of December and March through June. For the Southeast order, the current diversion limit standards for pool plants and cooperatives acting as handlers are not to exceed 33 percent during the months of July through December, and 50 percent in the months of January through June.

In addition, the proposed amendments for adoption would make identical the daily touch-base standards of at least one day's milk production each month of a dairy farmer in the Appalachian and Southeast orders. Currently, the Appalachian order has a touch-base standard of 6 days' production in any month of July through December and not less than 2 days' production for the months of January through June. Currently, the Southeast order has a touch-base standard of not less than 10 days' production for the months of July through December and not less than 4 days' production for the months of January through June.

The changes proposed for adoption to the pooling standards serve to revise established criteria that determine those producers, producer milk and plants that have a reasonable association with and are consistently serving the fluid needs of the Appalachian and Southeast marketing areas. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I needs and determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. The criteria for pooling are established without regard to the size of any dairy industry or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities.

The proposed amendments for adoption add January and February to the months of July through December as months when transportation credits may be paid for the Appalachian and Southeast orders to those handlers who incur the costs of providing supplemental milk. The amendments also expand the payment of transportation credits for supplemental milk to include the full load of milk rather than the calculated Class I portion and provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits for the Appalachian and Southeast orders. In addition, only the maximum monthly transportation credit assessment for the Southeast order is increased from the current $0.20 per cwt to $0.30 per cwt on all milk assigned to Class I use. The transportation credit provisions are applicable only to Appalachian and Southeast orders are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products. The changes will not have a significant economic impact on a substantial number of small entities.

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

This notice does not require additional information collection that needs clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information that can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties were invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 3, 2007; published May 8, 2007 (72 FR 25986).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative partial decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Appalachian and Southeast marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act (AMAA) and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, STOP 9200—Room 1031, 1400 Independence Avenue, SW., Washington DC 20250–9200, by April 29, 2008. Six (6) copies of these exceptions should be filed. All written submissions made pursuant to this tentative partial decision will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses.

A public hearing was held upon proposed amendments to the marketing agreement and the orders regulating the handling of milk in the Appalachian, Southeast, and Florida marketing areas. The hearing was held, pursuant to the

provisions of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The proposed amendments set forth below are based on the record of a public hearing held in Tampa, Florida, on May 21–23, 2007, pursuant to a notice of hearing issued May 3, 2007, published May 8, 2007 (72 FR 25986).

The material issues on the record of hearing relate to:

1. Class I Prices—adjustments and pricing surface.

2. Producer milk—diversion limit and touch-base standards.

3. Transportation Credit Balancing Fund Provisions.

4. Determination of whether emergency marketing conditions warrant the omission of a recommended decision and an opportunity to file written exceptions.

Findings and Conclusions

The proposals, published in the hearing notice as Proposals 1, 2 and 3, seeking to make various changes to the Appalachian, Southeast and Florida milk marketing orders (hereinafter these marketing areas and marketing orders will collectively be referred to as the southeastern marketing areas or orders as the case may be) are adopted immediately in this tentative decision. These adopted proposals form an integrated package of changes that simultaneously provide for: (1) The temporary increase in Class I prices and the Class I pricing surface in the three southeastern orders, and (2) for the Appalachian and Southeast orders—(a) more stringent diversion limit standards, (b) lower touch-base standards, and (c) other specific changes to both orders' transportation credit balancing fund provisions.

While the summary of testimony is presented as three separate material issues, the discussion and findings on all three material issues are provided after the summary of briefs.

The minimum Class I prices of the three southeastern orders, as with all other Federal milk marketing orders, are set by using the higher of an advance Class III or Class IV price as determined by the Department and adding a location-specific differential, referred to as a Class I differential. The Class I differentials are location-specific by county and parish for all States of the 48 contiguous United States. These Class I differentials are specified in 7 CFR Section 1000.52.

The diversion limit standards of the Appalachian and Southeast milk orders are described in the *Producer milk* definition of the orders (7 CFR 1005.13 and 7 CFR 1007.13, respectively) and specify the maximum volume of milk that may be diverted to a nonpool plant and have the diverted milk pooled and priced under each respective order. Currently, the diversion limit standards of the Appalachian order for cooperatives acting as handlers (and pool plant operators that are not cooperatives) are not to exceed 25 percent for the months of July through November, and January and February and 40 percent for the months of December and March through June. For the Southeast order, the current diversion limit standards for cooperatives acting as handlers (and pool plant operators who are not cooperatives) are not to exceed 33 percent during the months of July through December and 50 percent in the months of January through June. As adopted herein, the diversion limit standards of both orders are made identical—not to exceed 25 percent for the months of January, February, and July through November and 35 percent for the months of March through June and for the month of December. This represents a modest tightening of the diversion limit standards for the Appalachian order and a significant tightening of the diversion limit standards for the Southeast order.

This decision adopts identical daily touch-base standards of at least one-day's milk production per month of a dairy farmer in order for the dairy farmer to be considered a producer under each respective order's *Producer milk* definition and for making a producer's milk eligible for diversion to nonpool plants. This represents a significant change from the current touch-base standards for the Appalachian order of 6 days' production in any month of July through December and not less than 2 days' production for the months of January through June, and for the Southeast order of not less than 10 days' production for the months of July through December and not less than 4 days' production for the months of January through June.

Currently, only the Appalachian and Southeast orders of the three southeastern orders contain provisions for a transportation credit to partially offset handler costs of transporting supplemental milk for Class I use during certain times of the year from producers located outside of the two marketing areas. These producers are not part of the regular and consistent supply of Class I milk to the Appalachian and Southeast marketing areas.

Transportation credit balancing funds were first established for the Appalachian and Southeast (or predecessor orders) in 1996 and operate independently of the producer-settlement funds. A monthly per hundredweight (cwt) assessment is charged to Class I handlers on a year-round basis on the volume of milk assigned to Class I use at a rate of $0.15 per cwt in the Appalachian order and $0.20 per cwt in the Southeast order. Payments from the transportation credit balancing fund are made during the months of July through December (when milk supplies are tightest) in both orders to those handlers who incur the costs of providing supplemental milk. The transportation credit balancing fund provisions of the two orders were amended on an interim basis in December 2006 (71 FR 62377).

Changes adopted in this decision to the Appalachian and Southeast order transportation credit balancing fund provisions: (1) Extend the number of months in which transportation credit balancing funds may be paid from the current months of July through December to include the months of January and February, with the option of the month of June if requested, and approved by the Market Administrator; (2) expand the payment of transportation credits for supplemental milk to include the entire load of milk rather than the current calculated Class I utilization; (3) provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits; and (4) increases the monthly transportation credit assessment rate from the current $0.20 per cwt to $0.30 per cwt. for the Southeast order.

1. Class I Prices—Adjustments and Pricing Surface

A witness appearing on behalf of the proponents, Dairy Cooperative Marketing Association (DCMA), testified in support of temporarily increasing minimum Class I prices in the three southeastern milk marketing orders. The witness testified that all elements of their proposals for the three southeastern milk orders are offered as a ''single package'' to address the needs of all the southeastern region's dairy industry stake holders and represents an integrated package of needed changes. It was the opinion of the witness that the supply of milk for fluid use in the southeastern marketing areas is threatened and that several simultaneous changes to the provisions of the three orders are needed to attract

a sufficient quantity of milk to meet the fluid needs of the markets.

According to the witness, DCMA consists of nine Capper-Volstead cooperative members that include Arkansas Dairy Cooperative Association, Damascus, AR; Cooperative Milk Producers Association, Inc., Blackstone, VA; Dairy Farmers of America (DFA), Kansas City, MO; Dairymen's Marketing Cooperative, Inc., Mt. Grove, MO; Lone Star Milk Producers, Inc., Windthorst, TX; Maryland & Virginia Milk Producers Cooperative Association, Inc. (MD–VA), Reston, VA; Select Milk Producers, Inc., Artesia, NM; Southeast Milk, Inc. (SMI), Belleview, FL; and Zia Milk Producers, Inc., Roswell, NM. The witness testified that each of the DCMA members marketed and pooled their milk in one or more of the three southeastern milk marketing order areas during 2006.

According to the DCMA witness, during December 2006 members of DCMA pooled more than 87 percent of cooperative and non-member producer milk on the Appalachian order, more than 87 percent of the cooperative and non-member producer milk on the Southeast order, and more than 96 percent of the cooperative and non-member producer milk on the Florida order.

The DCMA witness testified that their proposed changes to the Class I pricing surface better reflect the actual cost of transporting milk and the pattern in which milk produced outside of the marketing areas moves into the three marketing areas. According to the witness, the cost of procuring milk for fluid use for the southeast region has increased because local production is in serious decline and continues to decline at an increasing rate. The witness noted that the three southeastern orders collectively import more than one third of the region's milk supply during the most deficit months of the year to cover the fluid milk needs. Fluid demand exceeds 300 million pounds of milk each month in the three southeastern marketing areas, the witness said. The witness characterized the economic situation of the dairy industry in the region as dire and marketing conditions as disorderly. The witness asserted that producers currently experience inequitable prices for their milk, that handlers have unequal costs, and that there are insufficient economic incentives for the procurement of milk supplies.

The DCMA witness characterized the southeastern region as having rapid population growth that is expected to continue to increase. The witness indicated that the U.S. Census Bureau population growth estimates for the States of Alabama, Arkansas, Florida, Georgia, Mississippi, Louisiana, North Carolina, South Carolina, and Tennessee have collectively increased by 8.4 percent from 2000 to 2006, while the population of the U.S. as a whole increased 6.2 percent.

Using Market Administrator statistics on in-area milk production for the three southeastern marketing order areas, the DCMA witness contrasted population growth to the region's milk production to demonstrate that the dairy industry is in serious decline. The witness said that during 2006 milk was delivered into the three southeastern orders from at least 27 states. The witness explained that local in-area milk production (milk produced within the geographic marketing area boundaries) during 2006 for both the Appalachian and Southeast areas supplied the entire Class I needs of these two areas only four months of the year and Florida's in-state milk production was insufficient to supply the Class I needs in every month of 2006. The witness estimated that the Appalachian and Southeast marketing areas are able to supply only about 76 percent of the milk necessary to meet Class I, Class II and reserve demands, while in Florida, in-area producers are able to supply only about 66 percent of the milk necessary to meet Class I and reserve demands on an annual basis.

The DCMA witness asserted that minimum Federal order Class I prices have increased only twice in the past 22 years—as a part of the 1985 Farm Bill and as part of Federal milk order reform made effective in January 2000. Specifically, the witness related that the Class I differential for Atlanta increased from $2.30 to $3.08 per cwt in 1985 but was increased by only two cents to $3.10 in January 2000. According to the witness, under Federal order reform, some Class I differentials in distant milk surplus areas were increased more than in the milk-deficit regions of the southeast.

The DCMA witness also was of the opinion that changes to the Class I pricing surface resulted in a flattened pricing surface and narrowed producer blend price differences between orders. The witness testified that such changes diminished the economic incentives to move milk within the southeastern marketing areas as well as to move milk into the deficit southeastern region of the U.S. According to the witness, minimum Class I price differences and returns to producers are simply not high enough to move milk into these deficit markets without substantial over-order prices.

The DCMA witness explained that since 1986 diesel fuel prices have risen more rapidly than Class I differentials (and thus Class I prices) in the southeastern region. Relying on data of the Energy Information Administration (EIA) of the U.S. Department of Energy, the witness noted that the U.S. average diesel fuel price increased by 187 percent from 1986 and 2006 (from $0.94 per gallon to $2.07 per gallon). The witness compared this increase to the 0.64 percent or $0.02 per cwt increase in the Class I differential for Atlanta since 1986.

The DCMA witness testified that the slope of the Class I pricing surface should be changed to progressively increase Class I prices as milk moves to the east and south within the three marketing areas. The witness was of the opinion that changing the slope of the Class I price surface inside the three marketing areas in this way would better encourage milk to move within the two marketing areas. Additionally, the witness was of the opinion that pricing signals to producers would direct their supplies to the most milk-deficit portions of the regions. In this regard, the witness added that simply raising Class I prices uniformly throughout the three order marketing areas would not result in improved pricing signals to producers.

The DCMA witness explained that in developing the proposed Class I price structure and adjustments to current Class I price levels, DCMA considered two alternatives. According to the witness, in one pricing alternative all the Class I price relationships between plants in the three southeastern orders could be retained. However, under this alternative, the witness explained, the Class I prices for the plants on the outer edges of the Appalachian and Southeast marketing area boundaries would increase considerably, resulting in significant changes in price relationships between those plants and plants regulated by adjoining Federal orders.

The DCMA witness said that alternatively the slope of the Class I price surface within the three marketing areas could be altered to minimize plant-to-plant Class I price relationship changes. The witness testified that this approach would result in a pricing structure that better reflected actual milk movements from within and outside of the marketing areas. The witness pointed out that in either approach, plant-to-plant price relationships would change and that the method they chose provided the least change in plant-to-plant price relationships.

The DCMA witness also stressed the need for the proposed Class I price adjustments to remain aligned with the Class I price structure in adjoining marketing areas. The witness said that the proposed Class I pricing surface outside of the three southeastern marketing areas would not be changed. The witness was of the opinion that the proposed Class I price adjustments are reasonably aligned with Class I prices in adjoining marketing areas. Through an analysis of plant-to-plant movements of packaged milk, the witness indicated that DCMA's proposed Class I pricing structure provides pricing adjustments that are reasonable and improves the slope of the Class I pricing surface.

The DCMA witness explained that both a most distant demand point and several supply locations were identified in developing the proposed Class I pricing surface. The witness indicated that Miami, Florida, was identified as the most distant demand point in the southeastern region from any alternative milk supply area. According to the witness, the five possible major supply locations and their distance to Miami were also identified. These locations included: Wayne County, Ohio; Jasper County, Indiana; Hopkins County, Texas; Lancaster County, Pennsylvania; and Franklin County, Pennsylvania.

The witness indicated that of the five possible supply sources, Wayne County, Ohio, was determined as the least cost supply location with a calculated Class I price adjustment of $6.14 per cwt at Miami, Florida. The witness testified that Class I price adjustments were progressively adjusted to smaller and smaller Class I price adjustment values as plant location values in the southeastern region were adjusted by their distance from the supply locations.

According to the DCMA witness, the plant-to-plant cost of moving packaged milk was analyzed. The witness testified that successive movements of packaged fluid milk from the outer edge of the Appalachian and Southeast marketing areas towards Miami, Florida, were analyzed. As with bulk milk movements, the witness explained, at each plant location the minimum cost of moving packaged milk was determined and compared to the minimum costs of moving bulk milk. The witness concluded that the bulk and plant-to-plant packaged milk movements were very similar.

The DCMA witness testified that the calculated Class I pricing adjustments were re-adjusted so that plants located near to each other would have a similar Class I price adjustment. The witness also acknowledged that the proposed pricing structure could not maintain current Class I price relationships because the current Class I price surface does not reflect actual hauling costs. According to the witness, the west-to-east proposed increase in Class I price adjustments reflects higher hauling costs.

The DCMA witness characterized the proposed adjustments to the calculated Class I price surface as being the result of ''smoothing.'' The witness explained that deviation from the calculated Class I price adjustment represents factoring best professional judgment in assuring that plants located near each other have the same Class I price adjustment and the need to maintain alignment with Class I prices in adjoining marketing areas.

According to the DCMA witness, the proposed adjustments for plant locations regulated by the Appalachian order would increase in the range of $0.10 per cwt to $1.00 per cwt; plants regulated by the Southeast order would increase in the range of $0.10 per cwt to $1.15 per cwt; and between $1.30 per cwt to $1.70 per cwt for plants regulated by the Florida order.

Relying on Market Administrator data, the DCMA witness concluded that the proposed Class I price increases would generate higher marketwide pool values in all three southeastern orders. According to the witness, the estimated annual increase of the Appalachian order pool for 2004, 2005 and 2006 resulting from the proposed Class I prices alone would have totaled $19.3 million, $18.6 million and $18.3 million, respectively. For the Southeast order, the witness said, the annual pool value increase would have totaled $16.8 million, $17.1 million and $17.7 million, respectively. For the Florida order, the witness said, the annual increase in pool value would have totaled $36.4 million, $38.3 million and $39.2 million, respectively. In estimating the impact on minimum prices paid to dairy farmers, the witness said that average annual minimum uniform prices (as announced at current locations) would have been increased by approximately $0.25 per cwt to $0.26 per cwt for the Appalachian order, approximately $0.64 per cwt higher for the Southeast order, and $1.19 per cwt to $1.22 per cwt higher for the Florida order.

The DCMA witness acknowledged and explained that changes in Class I price relationships between plant locations resulting from any changed Class I price surface would be inevitable. In this regard, the witness asserted that the price adjustment differences between plant locations under the DCMA proposal would not exceed the cost of moving Class I fluid milk products and therefore would not result in the uneconomic movement of milk.

The DCMA witness concluded by testifying that orderly marketing would be improved with a Class I price structure that is more reflective of the true hauling costs to supply the milk-deficit southeastern region. The witness urged that the proposed Class I price adjustments and pricing surface be adopted immediately. The witness reiterated that the proposed Class I price adjustments be temporarily adopted pending any system-wide changes to the Class I differential level and pricing surface.

A total of 11 dairy farmers whose milk is pooled on at least one of the three southeastern orders testified at the hearing in support of DCMA's package of proposals but suggested modifications on how the package should be changed.

Three of the dairy farmers who testified were cooperative members of MD-VA, DFA and SMI (cooperatives previously described as member organizations of DCMA). These witnesses testified that the dairy industry in the southeastern region is in need of changes to the three marketing orders to respond to the decline in regional milk production. Their testimonies joined that of the DCMA witness supporting the DCMA package of proposals.

A dairy farmer whose milk is marketed on the Southeast and Florida marketing orders testified on behalf of Cobblestone Milk Producers, Inc. and Mountain View Farms of Virginia in limited support of the Class I price surface feature of DCMA's package of proposals provided certain modifications were made. This witness agreed with proponents concerning the decline of milk production in the southeastern region and the need to import supplemental milk supplies. According to the witness, lower producer pay prices in the southeastern region have led to rapidly declining production that is not being replaced by new farms or the expansion of existing farms. It was the opinion of this witness that the projected increases in producer pay prices arising from the proposed increase in Class I prices would not be enough to affect production trends in the southeastern region. The witness expressed concern that Class I processors would demand their over-order premiums be lowered to compensate for increases in the three orders' minimum Class I prices. The witness requested that the proposed Class I price adjustments for the

Appalachian and Southeast marketing areas be increased but did not offer specific amounts.

Four dairy farmers from North Carolina testified in general support of the proposed Class I price adjustments. Three of the witnesses represented organizations that were part of the Southeast Producers Steering Committee (SPSC), whose members include North Carolina Dairy Producers Association, Georgia Milk Producers Association, Upper South Milk Producers Association, Kentucky Dairy Development Council (KDDC), North Carolina Department of Agriculture and Consumer Services, and the North Carolina Farm Bureau Federation. All four witnesses were of the opinion that the proposed Class I price adjustments would not be adequate to increase prices paid to dairy farmers in order to stem the decline of milk production in the southeastern region. The witnesses were of the opinion that additional efforts should be made to enhance local milk production. One dairy farmer witness testifying on behalf of the KDDC, said that other adjustments needed to be made to the proposed Class I price adjustments because Kentucky dairy farmers would benefit less from the proposed adjustments than dairy farmers located in the Southeast and Florida marketing areas. Another North Carolina dairy farmer witness offered the opinion that Appalachian producers would need to receive at least a $1.00 to $1.50 per cwt increase in their mailbox price to stimulate local milk production. A third North Carolina dairy farmer witness stressed that more emphasis should be made to seek solutions that would increase local milk production rather than seeking better ways to import milk into the region from locations located far from the region. Another dairy farmer, also from North Carolina, expressed concern that over-order premiums might fall because of the proposed Class I prices adjustments. In addition, a SPSC witness, as well as others, called for a comprehensive study to identify problems and alternatives to the proposals regarding the decline of milk production in the southeastern region.

A witness appearing on behalf of National Dairy Holdings (NDH) testified in limited opposition of the Class I price adjustments of the DCMA package. According to the witness, NDH is a national dairy processor with facilities located throughout the country. The witness indicated no specific opposition to Class I price increases but conditioned such increases on the fair distribution of the revenue to producers in the southeastern region. While the witness testified that NDH has no difficulty procuring milk for its plants located in the southeastern region, the witness acknowledged other testimony that identified milk production problems of the southeastern region and that the region's producers are in need of relief. The witness expressed concern on how the proposals would impact NDH's wholesale packaged milk sales. The witness also suggested that issues discussed at the hearing could be addressed by utilizing a point-of-sale or plant-point pricing method.

A witness appearing on behalf of the Kroger Company (Kroger) testified in opposition to the proposed Class I price adjustments for the Appalachian and Southeast marketing orders. According to the witness, Kroger operates four fluid distributing plants that are regulated by the Appalachian and Southeast orders (Winchester Farms, Westover Dairy, Heritage Farms Dairy and Centennial Farms Dairy). The opinion of the witness was that the proposed Class I price adjustments would disrupt traditional pricing relationships which were established by the 1985 Farm Bill and would generate competitive discrepancies with adjoining markets.

The Kroger witness testified that the proposed Class I price adjustments would place their plants in an unacceptable competitive situation with each other in the Appalachian and Southeast marketing areas. Specifically, the witness requested that the Class I price adjustments for Louisville, Kentucky, Lynchburg, Virginia, Murfreesboro, Tennessee, and Atlanta, Georgia be unchanged. The witness also indicated that Winchester, Kentucky be increased by no more than $0.10 per cwt in order to maintain competitive milk procurement price relationships with other Kroger plants located in the Cincinnati area of the Mideast milk marketing areas. The witness opposed the proponent's position that the proposal be considered on an emergency basis.

A witness appearing on behalf of the Milk Industry Foundation (MIF) testified in opposition to the Class I price adjustments of DCMA's package of proposals. According to the witness, MIF is a member organization of the International Dairy Foods Association (IDFA) which represents 115 member companies that market approximately 85 percent of the nation's milk and dairy products. The witness testified that the proposed changes are not necessary because an adequate of supply of milk already exists for the Appalachian, Southeast and Florida orders. The witness stated that because the Federal order system is a national market, milk is available from anywhere in the country. The witness noted over-order premiums compensate those entities who supply the deficit regions. The witness was of the opinion that declining milk production in the southeastern region has been occurring for many years and as such does not warrant increasing Class I prices and accordingly does not warrant the Department to take emergency action.

The MIF witness was of the opinion that Class I prices cannot be changed in one region of the country without affecting milk marketing in other regions. The witness said that the proposed Class I price adjustments would change the competitive relationships between plants located within and outside of the three southeastern marketing areas. The witness argued that Class I sales would be discouraged because all Class I plants in the three marketing areas would be required to pay a higher price for milk. The witness requested a comprehensive analysis of the national market before adopting the proposed Class I price adjustments.

A witness appearing on behalf of Dean Foods Company (Dean) testified in opposition to the proposed Class I price adjustments of DCMA's package of proposals. The witness agreed with testimony of other witnesses indicating the deficit milk supply conditions in the three southeastern marketing areas and the need to increase prices paid to the region's local dairy farmers.

The Dean witness was of the opinion that a comprehensive analysis of the potential impacts of changing the Class I price surface in the three marketing areas had not been conducted. The witness characterized DCMA's package of proposals as containing ''too many moving parts'' that makes it difficult to evaluate the impact of the proposed Class I price adjustment features. The witness was of the opinion that Appalachian and Southeast marketing area dairy farmers are in greater need of higher producer prices than dairy farmers in the Florida marketing area and noted that the proposed Class I price adjustments would benefit Appalachian and Southeast marketing area producers the least. In this regard, the witness worried that the prices received by dairy farmers across the southeastern region would be unfairly distributed if the proposed Class I price changes were adopted.

The Dean witness was of the opinion that the proposed Class I pricing surface and Class I pricing adjustments would change how milk moves to and between plants located within and outside of the

three marketing areas. The Dean witness testified that the assumptions used by DCMA in laying the foundation for the proposed Class I price adjustments and Class I pricing structure are flawed. In this regard, the witness noted that the USDA 1999 Final Decision on Federal milk order reform indicated that the cost of hauling raw milk was linear, [cost increases as the distance milk is transported increases at a constant rate] but that the cost of hauling packaged milk was nonlinear. Accordingly, the Dean witness argued that the proposed Class I pricing changes could give distributing plants located outside the marketing area's incentive to change their route dispositions in order to become regulated on one of the three marketing orders.

According to the Dean witness, distributing plants located outside the area could become regulated at the expense of plants located in the area. As a result, the witness concluded, Class I revenue generated by out-of-area distributing plants would be returned to dairy farmers located far outside of the three southeastern marketing areas. The witness offered that perhaps the greatest beneficiaries of the proposed Class I pricing changes could be producers located as far away as Illinois and Indiana.

The Dean witness also criticized reliance on Wooster, Ohio (located in Wayne County) as a supply area for the southeastern region and being a basis of DCMA's proposed Class I price adjustments. The witness noted while DCMA identifies Wooster, Ohio, as a supply area for the southeastern region, a Pennsylvania State proceeding held in 2006 indicated the testimony of a DFA witness saying that milk was not available in the Wooster, Ohio, area to supply Pennsylvania.

The Dean witness offered nine modifications to DCMA's package of proposals. The witness explained that their proposed modifications to the package of proposals would not seek to provide higher Class I prices or change the Class I pricing surface. According to the witness, the Appalachian and Southeast marketing orders pooling provisions should be identical to those of the Florida marketing order (discussed further below).

2. Producer Milk—Diversion Limit and Touch-Base Standards

The DCMA witness testified that the diversion limit standards of the Appalachian and Southeast orders should be identical. According to the witness, diversion to nonpool plants allows for the pooling of milk that is transferred from pool to nonpool plants without milk first needing to be delivered to pool plants. In setting a reasonable limit, the witness was of the opinion that diversion limit standards must take into account reserve supplies needed for Class I use, the balancing needs of the markets and the seasonality of production.

The DCMA witness testified that milk-deficit Federal orders tend to have lower diversion limit standards relative to orders with substantial reserve milk supplies. The witness testified that while the Appalachian and Southeast order diversion limit standards generally reflect their milk-deficit marketing conditions, they are in need of tightening. Specifically, the DCMA witness proposed that the diversion limit standards be 25 percent during the months of January, February, and July through November, and 35 percent for the months of March through June and for the month of December.

In explaining the analysis conducted in arriving at proposed new diversion limit standards for the Appalachian and Southeast orders, the DCMA witness testified that daily producer milk receipts by distributing plants regulated by the two orders from January 2004 through December 2006 were compared to the day of the month when daily receipts at distributing plants were greatest. The witness explained that the differences between the day of greatest receipts and each day's actual receipts for the month at distributing plants were then summed. According to the witness, the resulting value represents the amount of additional milk that would need to be pooled as reserve milk to be able to satisfy Class I demands at a distributing plant on the day of their greatest need. The witness stated that the analysis showed approximately 12 to 13 percent of additional milk volume of distributing plant receipts would be the minimum reserve necessary to cover daily fluctuations in the demand for fluid milk at distributing plants. On an annual basis, the minimum average reserve needed as calculated is about 22 percent, the witness said.

The witness explained that the proposed diversion limit standards of 25 percent for both orders for the months of January, February, and July through November, are based on the analysis described above and the need to provide for an additional reserve in the tightest supply months. The witness explained that the proposed diversion limit standards of 35 percent for the months of March through June and the month of December accommodate seasonal fluctuations in supply. The witness explained that this standard would allow regular producers who supply the Class I needs of the marketing areas in the tight supply months to pool all of their additional production in the flush months and accommodate the regular decline in Class I sales that occurs when schools close for the summer months. According to the witness, Class I plants also temporarily close or severely limit their receiving operations over the holiday period in December, resulting in substantial surplus milk.

Relying on Market Administrator data, the DCMA witness estimated that the impact on the minimum uniform prices from lowering the diversion limit standards alone would raise blend prices approximately $0.02 per cwt and $0.07 per cwt annually for the Appalachian and Southeast orders, respectively. The witness indicated that a change in the blend price for any particular producer would vary based on the location the producer's milk was delivered.

The DCMA witness stressed that the proposed changes in the two orders' diversion limit standards do not fully capture the true volume of milk likely to no longer be eligible to be pooled on the two orders. The witness explained that if the volume of producer milk delivered to pool plants were the same each month, then the volume of producer milk no longer pooled and priced by the orders would drop about 6.67 percent and 29.72 percent on the Appalachian and Southeast orders, respectively. The witness further explained that lowering the diversion limit standards should also result in increasing minimum order blend prices paid to producers. According to the witness, proposed changes to the diversion limit standards of the order, together with expected increases in revenue arising from Class I price adjustments and Class I pricing surface, will likely encourage local milk production, the movement of milk into the region from distant sources, or some combination of both.

The DCMA witness testified that the package of proposals also includes the lowering of the touch-base standards of the Appalachian and Southeast orders and makes them identical. According to the witness, this would discourage uneconomic movements of milk and offer operational savings for cooperatives supplying the Class I needs of the marketing area.

The DCMA witness explained that because of the continuing decline in local milk production, an increasing amount of milk that is produced further from the marketing areas is becoming a regular part of the supply of Class I milk. The witness characterized this milk of distant dairy farmers as the

reserve supply needed for balancing the Class I needs of the two marketing areas.

The DCMA witness was of the opinion that reducing the touch-base standard to one day each month in both orders is necessary for the efficient pooling of reserve supplies. In this regard, the witness testified that lowering the touch-base standard would no longer result in displacing local milk already supplying the markets' Class I needs with the milk produced farther from the marketing areas that is shipped just to meet pooling standards. According to the witness, requiring producers to deliver more days to pool plants when the milk is not truly needed results in increasing the cost of supplying the Class I needs of the two markets.

Eight dairy farmers testified in general support of DCMA's proposed changes to the two orders' diversion limit and touch-base standards. Some were of the general opinion that the regular reserve supply for the Appalachian and Southeast marketing areas should be pooled when not delivered to Class I plants. While all supported the pooling of milk that regularly supplies the Class I needs of the two marketing areas, several dairy farmers expressed caution that the diversion limits were not being lowered enough while touch-base standards were needlessly being lowered. According to these witnesses, this would encourage pooling milk not truly supplying the markets and result in lower blend prices paid to local dairy farmers. The dairy farmers testifying supported adopting needed changes on an emergency basis.

A witness representing Dean testified that the proposed changes to the diversion limit and touch-base standards would not be sufficient to deter the uneconomic movement of milk or to enhance producer prices in the Appalachian and Southeast marketing areas. According to the witness, current diversion limit standards are in excess of the markets' balancing needs and should be lowered immediately.

The Dean witness characterized the Appalachian and Southeast orders as being very similar to the Florida order in terms of milk consumption and production. The witness was of the opinion that the pooling standards of the Florida order work well and pooling milk not consistently serving the market's Class I needs rarely occurs. The witness specifically proposed that diversion limit standards be changed to 15 percent for the months of December through February, 20 percent for the months of March through June, and 10 percent for the months of July through November.

According to the Dean witness, dairy farmers will receive higher blend prices if diversion limits are made even lower than proposed by DCMA. Relying on Market Administrator data, the witness stated that January 2004 had shown the highest ''need'' of reserve milk during 2004–2006 for the Southeast order at approximately 22 percent of total milk pooled on the order. The witness contrasted this with October 2004 where the ''needed'' reserve was approximately 7 percent. In this regard, the witness suggested that diversion limits could be reduced below that proposed by DCMA. According to the witness, if made too low, the Market Administrator has the authority to change the diversion limit standards if warranted.

The Dean witness opposed DCMA's proposed one day per month touch-base standard if DCMA's proposed diversion limit standards are adopted. The witness was of the opinion that inefficient movements of milk would result if the one day touch-base standard were adopted. However, the witness indicated support for a two-day touch-base standard provided the diversion limit standards of the Florida order are simultaneously adopted.

The Dean witness explained that when touch-base requirements are low, locally produced milk can be displaced by milk located far from the marketing area because it needs to be transported to the marketing area fewer times to qualify for pooling and receiving a higher blend price. The witness was of the opinion that only milk that is necessary to serve the Class I needs of the market should be delivered to that market. According to the witness, reserve milk supplies located far from the market should not be pooled on the market if they are not delivered to the market.

3. Transportation Credit Provisions

The DCMA witness explained that on September 1, 2006, the Secretary issued a tentative partial decision (71 FR 54118) which amended the transportation credit provisions of the Appalachian and Southeast orders. Specifically, the witness noted that the decision established a fuel cost adjuster to determine a variable mileage rate factor used to compute the payout of transportation credits and higher maximum transportation credit assessments on Class I milk for the Appalachian and Southeast orders. To accompany these adopted changes that were implemented on December 1, 2006 (71 FR 62377), the witness proposed four other changes to the transportation credit provisions that are part of the package of changes proposed for the two southeastern orders.

According to the DCMA witness, the four additional changes to the transportation credit provisions for both orders include: (1) Extending the months during which transportation credits may be paid to include the months of January and February with June being an optional transportation credit payment month; (2) expanding the payment of transportation credits to apply to the full load of milk, rather than the current calculated Class I portion of milk loads; (3) providing greater flexibility for supplemental milk producers to be eligible to receive transportation credit payments; and (4) raising the maximum monthly transportation credit assessment for the Southeast order from the current $0.20 per cwt to $0.30 per cwt.

According to the DCMA witness, the need for supplemental milk in the Appalachian and Southeast orders has increased during the months of January and February. The witness offered evidence showing that during January 2004 through December 2006, January and February are months with increasing Class I use in the Appalachian and Southeast orders. The witness claimed that during January and February, local milk is not sufficient to supply the Class I milk needs. It is this combination of Class I need and available local producer supplies that show January and February as being more like the current transportation credit payment months of July through December than the flush months of March through May, the witness concluded. According to the witness, adding January and February as transportation credit payment months would give suppliers of supplemental milk an opportunity to recoup a portion of the hauling costs to supply the marketing areas with milk for fluid use.

In explaining this proposed change, the DCMA witness said, in part, current transportation credit payment provisions result in reimbursements that are much lower than the real cost of hauling. The witness explained that the cost of hauling milk to Class I plants is the same regardless of the plant's use or the Class I utilization of the market. The witness was of the opinion that expanding the transportation credit payments to full loads of milk delivered only to pool distributing plants would enhance orderly marketing and better ensure that sufficient supplemental milk is delivered to pool distributing plants. The witness supported continuing transportation credit payments on supplemental milk deliveries to pool distributing plants only.

The DCMA witness proposed simplifying the process for determining milk that is eligible for transportation credit payments. The witness noted that currently, a dairy farm must be located outside either the Appalachian or the Southeast marketing areas, the dairy farmer must not meet the *Producer* provision under the two orders during more than two of the immediately preceding months of February through May and not more than 50 percent of the milk production of the dairy farmer during those two months, in aggregate, can be received as producer milk under the order during those two months.

The DCMA witness was of the opinion that the requirements for transportation credit payment eligibility should be changed to provide flexibility in meeting the criteria while limiting the receipt of transportation credits to only that milk which is truly supplemental and that is not part of the consistent and regular supply of milk serving the Class I needs of the two markets. Specifically, the witness proposed that: (1) A dairy farmer must not meet the *Producer* definition on the orders in more than 45 of the 92 days in the months March through May or (2) must have less than 50 percent of a producer's milk pooled on the orders during those three months combined. The witness argued that limiting the producer association with the orders to no more than half the time or to no more than half their milk production is sufficient in identifying a dairy farmer who is a supplemental supplier of milk to the marketing areas. These changes, the witness asserted, offer substantial cost savings to cooperatives that bear the burden of sourcing and supplying the supplemental milk needs of the markets from distant locations.

The DCMA witness testified that the maximum transportation credit assessment for the Southeast order needs to be increased from the current $0.20 per cwt to $0.30 per cwt given the proposed expansion of the transportation credit payments on full loads of milk to Class I distributing plants regulated by the two orders. The witness was of the opinion that otherwise the current assessment rate would be insufficient to cover anticipated shortfalls in the transportation credit fund.

While the DCMA witness proposed a higher transportation credit assessment rate for the Southeast order only, the witness projected that the proposed changes to Class I prices and the Class I pricing surface in the Appalachian and Southeast orders would lessen payments from the transportation credit balancing funds. The witness explained this may occur because the greater positive differences (increases) from adopting the proposed Class I price adjustments and Class I pricing surface. The witness did acknowledge that the additions of the months of January and February as transportation credit payment months would tend to increase transportation credit payouts.

Relying on Market Administrator data, the DCMA witness estimated that for the months of July through December 2006 the Southeast order transportation credit payments would total $15,704,872 as a result of their proposal, and January and February 2006 payments would total approximately $2,900,000, resulting in an overall amount of approximately $18,604,872. At the current assessment rate of $0.20 per cwt, the witness concluded that transportation credit balancing funds would not have been sufficient to pay all transportation credit claims in 2006. At the proposed $0.30 per cwt assessment rate, the witness was of the opinion that sufficient revenue would be generated to satisfy all transportation credit claims.

Relying on Market Administrator data for the Appalachian order, the witness said that during July of 2006 through January of 2007, transportation credit payments would have totaled approximately $4,073,312. According to the witness the month February 2006 would have included a payment of approximately $313,000, bringing the total estimated transportation credit total payments to $4,383,312. According to the witness, the current $0.15 per cwt assessment rate for the Appalachian order would have been sufficient and no increase in the assessment rate would be needed.

The DCMA witness supported continuing to provide for Market Administrator discretion in setting the transportation credit assessment rates at less than the maximum allowed. The witness was of the opinion that doing so will prevent the needless collection of revenue when the transportations credit balancing funds are sufficient to meet claims.

Four dairy farmers testified in support of DCMA's proposal to provide additional flexibility in determining which producers are supplying supplemental milk to the two marketing areas. As with other features of DCMA's proposals, these dairy farmers support adoption of these proposed changes on an emergency basis.

The witness appearing on behalf of Dean expressed support for adding the months of January and February as transportation credit payment months for the Appalachian and Southeast orders on the condition that tighter diversion limits be adopted. The witness said these months should be considered as payment-eligible months because the tentative decision implemented in December 2006 eliminated the ability to divert milk on loads of milk seeking the payment of a transportation credit. However, the Dean witness opposed expanding transportation credit payment eligibility to entire loads of milk. In this regard, the witness expressed concern that this would essentially result in Class I sales funding the supply of supplemental milk in lower-valued Class II uses.

Post-Hearing Briefs

Post-hearing briefs were filed by: Dairy Cooperative Marketing Association (DCMA), Southeast Producers Steering Committee (SPSC), Dean Foods Company and National Dairy Holdings (Dean/NDH), and the Milk Industry Foundation.

The DCMA post-hearing brief reiterated support for adoption of their proposals on an emergency basis. The brief stated that their proposals were developed as an integrated package and that the package of proposals better assures the Appalachian, Southeast and Florida milk orders' ability to attract a sufficient quantity of milk for fluid use. The brief said this is accomplished by increasing the Class I prices in the three milk marketing orders, lowering the diversion limit and touch-base day standards, and modifying the transportation credit provisions. The brief reiterated the deficit milk supply situation in the southeastern region. The brief emphasized that procuring milk for Class I use for the region is a major challenge that is borne disproportionately by cooperative associations and their dairy farmer members.

The DCMA brief explained that the Class I price adjustments and changes to the Class I pricing surface in the Appalachian, Southeast and Florida orders would accomplish two needed results. According to the brief, the changes would likely encourage local producers to increase milk production *and* provide pricing incentives for producers located outside the marketing areas to deliver milk to the three marketing areas for fluid use.

The DCMA brief stated that while plant price relationships would inevitably change as a result of their proposals, the Class I prices proposed are strikingly similar to plant price differences adopted in the 1999 Order Reform Final Rule. The brief indicated that this is proof that their method of developing the proposed Class I price

adjustments and Class I pricing surface is valid and meets the requirements of a regulated Class I price system.

The DCMA brief commented on the method used in developing their Class I pricing proposals as deviating from a model developed by Cornell University that was relied upon in the adoption of current Class I pricing structure. According to the brief, arguments regarding the cost differences between assembly and plant-to-plant milk deliveries as a direct function of the distance transported and not being the same as packaged milk movements when greater than 900 miles does not invalidate their proposed pricing structure. The brief characterized the proposed Class I pricing portion of the package of their proposals as containing all the elements used by the Department in the current Class I pricing structure. The brief also argued that DCMA's proposals generates Class I pricing relationships consistent with the objectives of marketing orders in assuring an adequate supply of milk for the three marketing areas, not encouraging the uneconomic movement of milk; and being reflective of the supply and demand conditions for milk within the marketing areas.

The DCMA brief explained that lowering the diversion limit standards in the Appalachian and Southeast orders would serve to enhance producer blend prices while the decrease in the producer touch-base days would act to encourage more efficient milk movements and offer cost savings to milk suppliers. The brief maintained that while some witnesses testified in support of even lower (tighter) diversion limits, no evidence to support such changes was presented. The brief added that diversion limit standards in both orders will effectively be much lower than the proposed standards because no diversions may accompany supplemental milk pooled on the order which receives a transportation credit payment. The brief also noted that DCMA's proposal for extending transportation credit pay-out months also effectively lowers pooling milk by diversion.

The DCMA brief stated that extending the payment of transportation credits to include the months of January and February and to the entire loads of milk would offer the suppliers of supplemental milk greater assurance that more of the actual costs of hauling milk to the southeastern region would be covered. According to the brief, simplifying the criteria that determines if producers are supplemental suppliers of milk to the marketing areas offers both administrative and marketing efficiencies. Finally, the brief explained that the proposed increase in the transportation credit assessment for the Southeast milk order would ensure that transportation credit payment claims would be adequate to meet anticipated needs.

The DCMA brief maintained that the record contains abundant evidence supporting the existence of emergency conditions in the three marketing areas affecting the ability to adequately supply fluid milk. The brief stressed that providing adjustments for higher Class I prices and modifying the Class I pricing surface, if even on a temporary basis, is necessary immediately. The brief indicated that milk production in the Southeastern states during the first quarter of 2007 declined at a faster rate than the annual decline during 2006 and 2005, and that this increasing rate of milk production decline cannot be ignored. The brief reiterated the continuing increases in hauling costs and the longer distances milk must be shipped to provide sufficient supplies to meet fluid demands.

A post-hearing brief was submitted on behalf of SPSC. The SPSC brief indicated support for the Class I portions of DCMA's proposals but was not fully supportive of the proposed diversion limit and touch-base standards and transportation credit provisions. The brief agreed with the DCMA proposals to increase Class I prices in the Appalachian, Southeast and Florida orders on an emergency basis because it would promote milk production within the three marketing areas by enhancing local producer income—the primary suppliers of fluid milk for the three southeastern markets. The SPSC brief did express concern that even with expected higher blend prices to producers accruing from higher Class I prices, the current trend of lower local milk production may not be slowed.

The SPSC brief indicated support to lower (tighten) diversion limit standards in the Appalachian and Southeast orders. However, the brief expressed the opinion that diversion limit standards for both orders could and should be reduced more than that proposed by the DCMA. The SPSC brief asserted that record evidence had not determined the appropriate base and reserve milk supply volumes or the proper diversion limit and touch-base standards for the Appalachian and Southeast orders or who should bear the costs of maintaining reserve milk supplies for the Southeastern region.

The SPSC brief was of the opinion that record evidence also did not clearly indicate that the volume of milk pooled on the order for other than Class I use actually would be lowered by adopting DCMA's proposed diversion limit and touch-base standards. According to their brief, the majority of the producer milk removed under the DCMA proposals would occur in only a few months of the flush production months for the Appalachian order and in the months of January and February for the Southeast order. The brief expressed concern that milk could actually be added in both orders in the other months due to the decrease in touch-base days. The brief maintained that in-area producers and those who provide the primary supply of milk for fluid use on a regular basis should receive the greatest share of revenue attributable to that service. According to the brief, pooling more milk than needed would only continue to depress the income of the Southeastern producers.

The SPSC brief found agreement with Dean's testimony that proposed a more aggressive lowering of diversion limit standards for the Appalachian and Southeast orders. The brief agreed with Dean's position that tighter diversion limits would sharply reduce the volumes of pooled milk in the two orders and the relative impact on producer pay prices would be more substantial. The brief indicated support for continuing to provide discretionary authority for the Market Administrators to tighten diversion limits and raise touch-base standards if necessary and without the need to resort to the formal rulemaking process.

The SPSC brief indicated conditioned support for DCMA's proposed changes to the transportation credit provisions of the Appalachian and Southeast orders. However, the brief questioned the proper role of transportation credits in both marketing orders. The brief requested the Department consider the proper distinction between true pooled reserve milk and supplemental milk.

A post-hearing brief submitted on behalf of Dean Foods Company and National Dairy Holdings, LLC (hereinafter referred to as Dean/NDH) agreed that the Southeastern region of the U.S. is a deficit milk production region and that the deficit is growing. The brief said that dairy farmers who regularly and consistently supply milk to fluid milk plants in the southeast region should be appropriately compensated for their raw milk and receive the blend price of the order they supply. However, the brief argued that adopting the proposed Class I price adjustments and the Class I price surface proposals is not supported by record evidence or by rule of law and should be denied. While the Dean/NDH brief expressed agreement that long-

term problems exist regarding the viability of the southeastern region dairy industry, it doubted that correcting problems that have prevailed for some 25 years could be solved overnight through emergency rulemaking.

According to the Dean/NDH brief, there is no evidence of an emergency that would warrant adopting the Class I price proposals by the omission of a Recommended Decision. To the extent that conditions warrant the need to rely on milk orders to return higher prices to dairy farmers, the brief asserted that an alternative method of returning higher prices can be achieved by simply lowering diversion limit standards of the orders.

The Dean/NDH brief noted that Dean and NDH operate several fluid milk processing plants in the Southeastern region and noted that processors opposed the Class I price adjustments and Class I pricing surface changes. The brief argued that such changes may result in unintended consequences which may make the situation in the southeastern region worse.

According to the Dean/NDH brief, adopting changes to Class I pricing may result in plants located outside the Appalachian and Southeast marketing areas gaining incentives to direct their fluid milk sales in the marketing areas and become pooled on those orders. The brief argued that while plants may gain in blend price changes by altering where they become pooled, the price surface may not change for their competitors. The brief also asserted that since January 2000, Class I prices were intentionally linked nationwide as part of Federal milk order reform and concluded that any change in Class I differentials or the Class I pricing surface, even at one price location, would change the economic incentive nationwide to serve that location. The brief contended, therefore that the entire national Class I price surface needs to be considered.

According to the Dean/NDH brief, DCMA's Class I price proposals fail to rely on accepted economic models and fail to follow the Department's established policies for making adjustments to the Class I price surface. Specifically, the brief argued that the economic calculations failed to take into consideration ''shadow pricing,'' which the brief characterized as how a market could react to changes such that an additional price change would alter distribution. The brief also argued that the Class I price proposals fail to calculate unique prices for each location by considering relevant reserve supply areas and fail to account for differences in raw milk movements versus packaged milk movements.

According to the Dean/NDH brief, the rationale for setting a target price for Miami, Florida, and then backing off that price and ''smoothing'' the result is arbitrary and capricious. The brief contended that by determining Class I prices in this way, such methodology was not applied uniformly and thus cannot meet the standards of the Administrative Procedure Act. In addition, the brief noted that no evidence or economic data backs up the ''smoothing'' process as described by DCMA testimony.

The Dean/NDH brief asserted that Wooster, Ohio, should not be identified as a supply area because it has never been relied upon as any kind of basing point for pricing milk and doing so now would be specifically contrary to testimony given at a Pennsylvania State hearing for a recent State of Pennsylvania's rulemaking. Accordingly, the brief contended that DCMA's entire Class I pricing proposals should be rejected.

According to the Dean/NDH brief, although the Class I price changes sought are ''temporary,'' competitive impacts of such changes can be long-term and result in permanent harm to Class I handlers. The brief asserted that any decision should be considered permanent unless it has a specific sunset provision. According to the brief, no specific sunset provision had been proposed or discussed in the hearing record.

The Dean/NDH brief pointed out that the dairy industry is also currently experiencing record high Class I prices for milk and high blend prices paid to dairy farmers obviate the need for emergency action. The brief noted that the May 2007 uniform price for Fulton County, Georgia, was $18.37 per cwt. According to the brief, this price is $1.37 per cwt higher than April 2007 and is $5.83 per cwt, or 45.3 percent, higher than in May 2006. The brief also noted that the Class I price for June 2007 at Fulton County was $1.92 per cwt higher than May 2007, and the July 2007 price increased by $3.07 per cwt. The brief indicated that even a proponent witness acknowledged that such higher prices are likely to continue through the fall 2007.

The Dean/NDH brief agreed that diversion limit standards for the Appalachian and Southeast orders should be lowered on an emergency basis and made identical to those of the Florida milk order. The brief indicated that the Florida milk order currently functions well by having lower diversion limit standards and this has supported the prevailing over-order premiums. The brief opined that because of the order's tight pooling provisions, the need for transportation credits and the need for holding numerous formal rulemaking hearings has been avoided. According to the brief, the Florida order's tight diversion limit standards have continually assisted that order in retaining strong blend prices paid to dairy farmers and attracting sufficient amounts of milk supplies.

The Dean/NDH brief asserted that pool revenues should be shared among only those producers who truly and regularly serve the Class I market and that diversion limit standards of the Appalachian and Southeast orders are not adequately identifying those true and regular suppliers. The brief asserted that both orders can be made more effective by requiring a genuine association of a milk supply with the market as intended by the AMAA.

The Dean/NDH brief indicated that if Dean's proposal for adopting the diversion limit standards of the Florida order for the Appalachian and Southeast orders is adopted, Dean would support the DCMA's one-day per month touch-base proposals. As they do not view DCMA's diversion limit standards as being any change at all, they oppose any change to the touch-base standards of the Appalachian and Southeast orders.

The Dean/NDH brief opposed the expansion of the payment of transportation credits to include the entire load of milk and stated that they should only be paid on Class I milk as currently provided under the Appalachian and Southeast orders. The brief expressed concern that adopting the proposed changes would create the wrong economic incentives. The brief noted that suppliers of milk to a Class I plant with a higher than market average of Class II use would be receiving a larger economic benefit than Class I plants with below market average Class II use. According to the brief, this would be contrary to assuring equal minimum milk prices among similar handlers.

The Dean/NDH brief was of the opinion that transportation credits have been a key factor in contributing to the decline of the dairy industry in the southeastern region. In this regard, the brief noted the proponents acknowledgement that in some cases current touch-base provisions in conjunction with transportation credits cause inefficient movements of milk. The brief asserted that transportation credits, not touch-base standards, give rise to inefficient movements of milk.

A post-hearing brief by MIF reiterated their opposition to adopting DCMA's proposals and asserted the absence of emergency marketing conditions that warrant emergency action. The brief noted awareness of declining milk production in the southeastern region but indicated this is not a sufficient basis for the adoption of the proposals on an emergency basis. The brief further argued that no emergency exists to warrant adoption of the proposals because the trends of declining milk production in the region and rising fuel costs have existed for many years.

The MIF brief stressed that the key purpose of the Federal milk marketing order program is to ensure an adequate supply of milk for Class I needs. In this regard their brief noted that no witnesses testified on the inability to procure milk for Class I use. The brief reiterated that in a survey of their membership conducted before the hearing, no member indicated difficulty securing milk for Class I needs in the three southeastern marketing areas. The brief also mentioned that over-order premiums are paid by Class I handlers to secure milk for fluid use and the proponents testified that current over-over premiums currently offset higher fuel costs.

The MIF brief noted that some southeastern dairy producers who testified at the hearing also participated in a herd-removal program called Cooperatives Working Together (CWT). In this regard, the brief cited this as an example that the concern for declining milk production in the southeastern region is misplaced.

The MIF brief asserted Class I sales would suffer if higher Class I prices are adopted because higher costs will increase wholesale costs and result in higher retail prices paid by consumers. The brief noted that the current, general structure of Class I location differentials has been in place for 22 years and that milk bottlers have made significant investments in plants and equipment during this time.

According to the MIF brief, plants could be disadvantaged in the marketplace solely because of increases in the Class I price relative to the Class I price of its competitors. The brief argued that a half-penny difference per gallon could result in lost customers for a distributing plant and that a 2.5 cent increase is enough to lose a supermarket account. The brief asserted that increasing a Class I price by 10 cents ($0.0086 per gallon) could yield dire results for a Class I plant. The brief indicated that an unexpected consequence could be that plants distant to the three orders could become associated with one of the three orders due to differences between transportation costs and increased Class I prices resulting in out-of-area plants taking away sales from in-area plants.

The MIF brief said that a comprehensive study and analysis on a national scale of all potential consequences and on demand for packaged milk was needed before any changes to Class I pricing are adopted. The brief reasserted the opinion that Class I prices could not be changed in the southeastern region alone because it changes marketing conditions in all marketing areas.

Discussion and Findings

The record of this proceeding reveals that for many years milk production has been declining in the southeastern region and supplying the region with supplemental milk has demanded the sourcing of milk supplies from ever farther distances from the marketing areas. Not only has the decline in milk production been in absolute terms, but when balanced with population increases, milk production in the region has failed to satisfy fluid demands year-round.

At issue in this proceeding is consideration of proposed changes to the Appalachian, Southeast, and Florida milk marketing orders aimed at assuring an adequate supply of milk for fluid use in the southeastern region of the U.S. As proposed by DCMA, the proposals are an integrated package of amendments to the three marketing orders that seek simultaneous changes with the aim of providing incentives for assuring a reliable supply of milk for fluid use. The package of proposals integrates: higher regulated minimum prices for Class I milk, changes to assure that the revenue accruing from higher minimum Class I prices will be shared with those producers who regularly and consistently serve the Class I needs of the region, cost savings for entities who have made the commitment to supply the region; and flexibility and incentives for supplying the Appalachian and Southeast marketing areas with supplemental milk by offsetting the cost of transportation.

Class I Prices and Class I Price Surface

Temporary adjustments to the Class I prices for the three southeastern orders are adopted and result in a change to the Class I pricing surface. The changes are specified in the order language. Assuming no other changes to the three southeastern orders, increasing Class I prices will increase the value of each order's marketwide pool. The higher minimum prices will also attract milk to all locations and increase blend prices for dairy farmers whose milk is pooled on the three southeastern milk marketing orders.

The basic foundation for deriving the temporary adjustments to Class I prices begins with DCMA's identification of *potential* supply areas and reliance on that *potential* supply area to yield the lowest Class I price adjustment based on the farthest point of milk demand. The potential supply point meeting this criteria was Wooster, Ohio, and the farthest demand point was identified as Miami, Florida. After identification of the nearest supply point and the demand point, the distance between these two points was relied upon to determine calculated price adjustments at all other county and parish locations within the marketing area boundaries of the three southeastern orders. The selection of Miami as the farthest point of milk consumption is consistent with recognition in the current pricing structure that Miami is the point with the highest Class I differential resulting in a Class I price designed to attract an adequate supply of milk for Class I uses.

As the proposal indicated, the selection of Wooster, Ohio, (Wayne County) as a supply point is one of several that were considered by the proponents. The selection of Wooster was made after consideration of other supply points because it would represent the least-cost point from which a milk supply could potentially be sourced from locations in the southeastern region. All other supply points considered would have resulted in much higher Class I price adjustments.

The Class I price adjustment at every county and parish location relies upon a mileage rate factor implemented in December 2006. This factor, representing approximately 80 percent of the cost of hauling bulk milk, is further reduced by 80 percent. While this formed DCMA's basic foundation for adjusting Class I prices, it is not the proposed Class I price adjustments at all locations in the southeastern region.

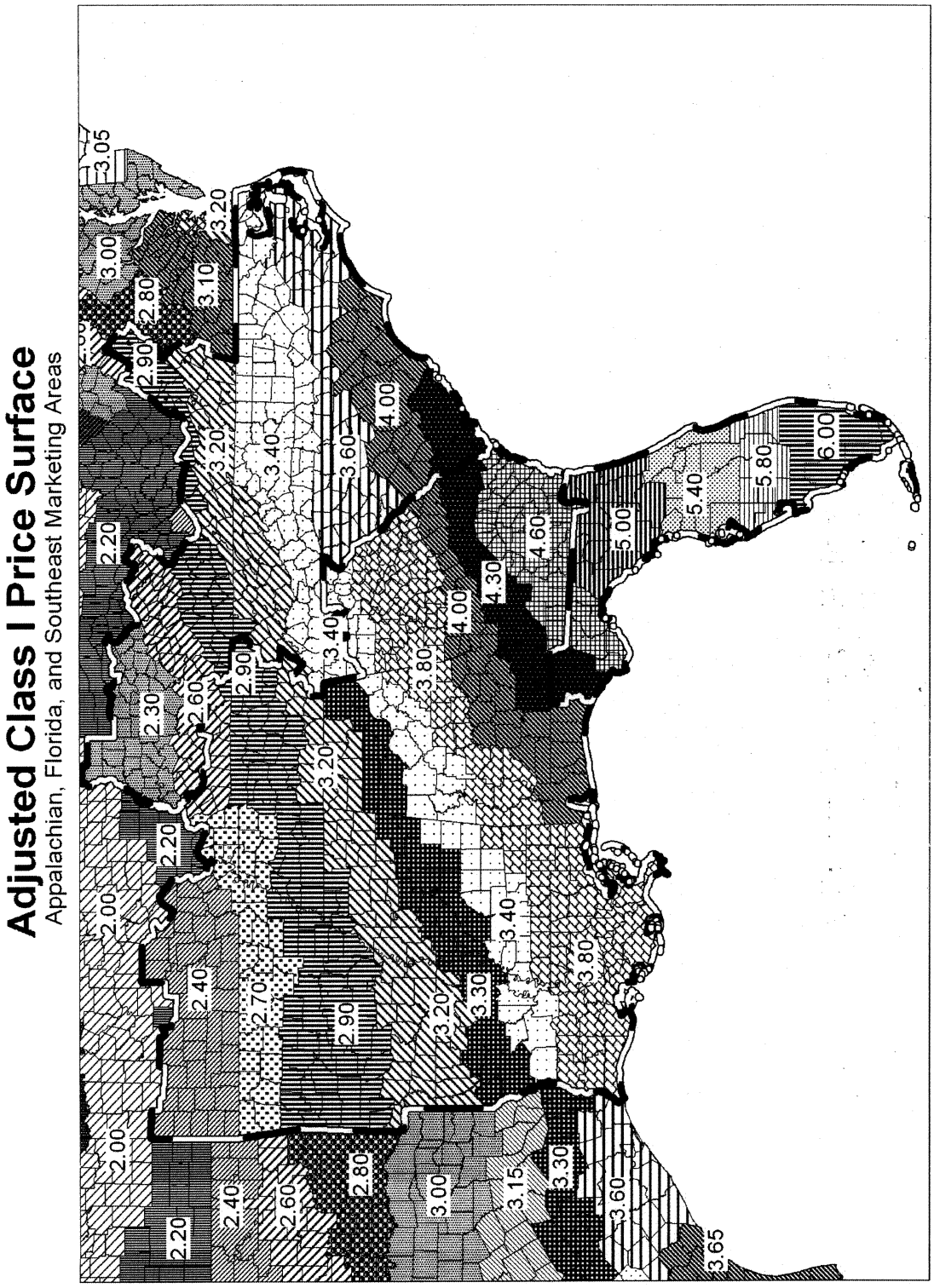
The DCMA's proposed Class I price adjustments differ from those calculated. What the proponent's have described as ''smoothing'' of the Class I price adjustments is essentially price alignment. In this regard, it is clear that the proposed Class I price adjustments are different from strictly calculated values. The proposed Class I price adjustments provide reasonable alignment with the current Class I price surface beyond the geographical boundaries of the southeastern orders.

Similarly, DCMA's Class I price adjustments differ from calculated

adjustments by adjusting calculated values to correspond to Class I processing plant locations. This establishes pricing zones that are conceptually identical to current pricing zones and assures that similarly situated Class I handlers will have the same minimum regulated Class I prices. Providing similar regulated prices for similarly situated handlers is consistent with the requirements of the AMAA. While conceptually identical, maintaining price alignment with adjoining milk marketing orders together with pricing zones, the proposed Class I price adjustments result in price relationships that are different from those that exist under the current pricing structure. Despite criticism that DCMA's adjustments change price relationships between plants of the same ownership, the key requirement that similarly located plants have similar regulated minimum prices is maintained.

In an effort to examine both the level and the reasonableness of the Class I price adjustments that were zoned and aligned with adjoining orders, DCMA evaluated the cost of shipping packaged milk. According to the record, there are some differences between what the resulting Class I price adjustments would be under the cost analysis of shipping packaged milk. Nevertheless, the similarities between Class I price adjustments as proposed and the cost adjustment analysis of shipping packaged milk are similar. Because the Class I price adjustment at all locations does not exceed the value of milk at alternative locations, in either bulk or packaged form, the Class I price adjustments are reasonable. This method of evaluating the proposed Class I pricing changes by comparison to packaged milk movement forms a rational basis to conclude that the proposed changes to Class I pricing are reasonable. The adopted Class I price adjustments are presented in Figure 1. While the Class I differentials in the southeastern region are not changed in this decision, the Class I price adjustments have been added to the current Class I differentials for illustrative purposes. Figure 1 provides a graphic presentation of the combined value of Class I differentials plus the adjustment values adopted in this decision.

On the basis of a pricing surface alone, the proposed Class I price adjustments will not likely result in the uneconomic movement of milk as asserted by opponents. The proposed pricing surface better reflects the economic conditions affecting the supply and demand for milk in the three southeastern marketing areas by providing greater pricing incentives indicative of actual milk movements and the cost of supply milk from alternative locations. The adopted Class I price adjustments results in a steeper Class I price surface that correlates with the higher location value fluid milk has in the southeastern region. The location value of milk is higher because of the cost involved in transporting milk to locations in the milk-deficit southeastern region from alternative milk-surplus locations.



Opponents to DCMA's Class I price adjustments assert that there is no reason to increase Class I prices because all Class I demands are being met under current order provisions. This decision rejects the assertion of an absence of a rationale to make changes to the pricing provisions of the three orders. The record of this proceeding reveals that it is the cooperative member organizations of DCMA who supply the majority of the Class I needs of the three marketing areas. In making the commitment to supply the fluid needs of the markets, the supplying cooperatives have largely reduced the burden of Class I handlers to source their supply. Similarly, it is the cooperative organizations that provide the service of balancing the three southeastern markets.

Opponents to DCMA's Class I price adjustments noted that there is an adequate supply of milk to meet fluid demands. There is an adequate national supply of milk to meet the national demands for fluid milk. However, in the deficit areas of the southeastern

marketing areas, there must be sufficient incentives provided by the orders to encourage the movement of milk from reserve areas to these deficit markets. In this regard, the location value of milk needs to consider local milk supplies, local demand, and transportation costs. The adopted Class I price adjustments should provide the additional incentives needed to offset some of the costs associated with the decreases in local supply, increases in local demand, and increases in transportation costs.

Opponents criticize DCMA's Class I amendments by identifying that other means and methods are available which would return greater revenue to dairy farmers instead of increasing minimum prices. Other changes adopted in this decision will, all other things being equal, tend to increase minimum regulated prices paid to producers. However, these changes are founded on only the very limited improvement gained from changes by lowering the diversion limit standards of the Appalachian and Southeast. These changes provide no additional revenue that also is needed so that Class I demand can be met at all times. In light of the chronic milk deficit conditions of the southeastern region, only higher minimum regulated prices can reasonably generate the additional revenue needed to assure that the Class I needs of the region can be continuously met. According to Market Administrator analyses, the estimated annual increase of the Appalachian order pool for 2004, 2005, and 2006 resulting from DCMA's proposed Class I price adjustments would have been $19.3 million, $18.6 million and $18.3 million respectively. For the Southeast order, the annual pool value increase would have been $16.8 million, $17.1 million and $17.7 million respectively. For the Florida order, the annual increase in pool value would have been $36.4 million, $38.3 million, and $39.2 million, respectively. While alternative methods such as a tightening of pooling standards will, among other things, tend to enhance producer revenue to those producers who regularly and consistently supply the Class I needs of the market, this alone will not establish minimum regulated prices high enough to attract an adequate supply for chronic milk-deficit marketing areas from alternative distant locations.

Diversion Limit and Touch-Base Standards—Appalachian and Southeast Orders

DCMA's proposed diversion limit and touch-base standards of the Appalachian and Southeast order are immediately adopted. The adopted changes make the diversion limit and touch-base standards of the two orders identical. Specifically adopted are diversion limit standards of: 25 percent of deliveries to pool plants during the months of January, February, July, August, September, October and November, and 35 percent in the months of March, April, May, June and December. Both order's touch-base standard are amended to require at least one-days' milk production of a producer must be delivered to a pool plant during the month in order for a producer to be eligible to divert to nonpool plants.

Based on record evidence, adoption of a one-day per month touch-base standard for both orders and making the diversion limit standards of both orders identical accomplishes three important pooling standard objectives. Specifically, the changes: (1) Provide a standard necessary to identify producers supplying the markets' Class I needs; (2) provide the criteria to identify the milk of producers who may be eligible for receiving a transportation credit in supplying supplemental milk for Class I use; and (3) allows milk that is part of the milk supply that regularly and consistently services the markets' Class I needs to be pooled on the orders.

Providing for the diversion of milk is a desirable and needed feature of an order because it facilitates the orderly and efficient disposition of milk when not needed for fluid use. When producer milk is not needed by the market for Class I use, some provisions should be made for that milk to be diverted to nonpool plants but still be pooled and priced under the order. The proposed lower diversion adjustments will likely reduce the volume of milk eligible to be pooled by diversion to a significant degree on the Southeast order and less so on the Appalachian order. Assuming all other conditions being equal, the adopted changes in diversion limit standards will result in higher blend prices paid to producers. This is a desirable outcome, especially for the Southeast order where the need to better identify the milk of those producers who regularly and consistently service the Class I needs of the Southeast marketing area is needed most. An examination of the Southeast order's utilization of milk belies the fact that the marketing area is chronically short of in-area milk production to meet the Class I demand of the marketing area. This can only be the result of pooling much more milk on the order than is necessary and that is part of the legitimate reserve supply of milk of the order that is available to service the Class I needs of the market.

The record reveals that according to Market Administrator analyses, the estimated impact on minimum order uniform prices of the proposed diversion limit standards in both orders would have average annual increases in uniform prices of $0.02 per cwt for the Appalachian order and $0.07 per hundredweight for the Southeast. Increased blend prices will contribute in providing greater incentives to maintain milk production from current producers and provide greater economic incentives for producers located outside of the marketing area to be regular and consistent suppliers of Class I milk to these two marketing areas.

Milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant or cooperative entity pooling milk for its own account. A diversion limit establishes the amount of producer milk that may be associated with the integral milk supply of a pool plant or cooperative acting in its capacity as a handler. With regard to the pooling issues of the Southeast order, the record reveals that current diversion limits contribute to the pooling of large volumes of milk on the order that does not regularly and consistently service Class I market needs. Therefore, lowering the diversion limit standards is appropriate to better assure that only milk which regularly and consistently services the market's Class I needs is pooled. Associating more milk than is actually part of the legitimate reserve supply available for Class I use unnecessarily reduces the potential blend price paid to dairy farmers who regularly and consistently service the markets' Class I needs. Without reasonable diversion limit standards, the orders' ability to provide for orderly marketing is weakened.

Diversion limit standards that are too high can open the door for pooling more milk on the markets. The record supports concluding that a 33 percent diversion limit for the Southeast order during the months of January through June and 50 percent for the months of July through December has not only resulted in lower blend prices harming local producers, it has resulted in Class I utilization rates that obscure that order as a deficit market.

For the Appalachian and Southeast orders, the record reveals that since the average reserve requirements did not differ greatly over the 36 month period (January 2004 through December 2006), having the same diversion limit standards for both orders are justifiable. In addition, by having identical diversion limits, the blend prices paid

to producers increase as milk is supplied to locations generally in an easterly and southern direction. To the extent that this diversion limit standard may warrant future adjustments, the orders already provide the Market Administrator authority to adjust diversion standards as marketing conditions may warrant. Given the total milk demands of the marketing areas revealed by the record, a minimum of about 12 to 13 percent of monthly pool distributing plant receipts would be needed to meet the minimum daily, weekly, monthly, and seasonal needs, as well as a modest margin for unanticipated changes in the supply and demand relationship for Class I milk needs. Accordingly, the proposed diversion standards for the orders are reasonable.

Touch-base delivery standards define the minimum number of days of milk production each month that a dairy farmer must supply to a pool plant of an order to be associated with that market, and thus qualifying to have their milk pooled by diversion. On the basis of the record evidence, this decision finds reason to support adopting a one-day touch-base standard for both orders. Concern has been voiced by conditional supporters of DCMA's package of proposed amendments for lowering the touch-base standards of the Appalachian and Southeast order because it represents an easing of a feature of the orders' pooling standards at a time when the opposite is needed if producer income in the two orders is to be improved. While this concern might be conceptually valid, the concern does not consider that the volume of milk pooled on the two orders will be appropriately restricted by the adopted diversion limit standards. In part, because the diversion limit standards of the orders are tightened, an easing of the touch-base standard can be made without fear of pooling the milk of producers who are not part of the regular and consistent supply of milk serving the Class I needs of the two marketing areas.

While diversion limit standards are a key feature of the pooling standards of an order for defining the total volume of milk that can be pooled on an order, an argument could be made that perhaps a touch-base standard is not necessary at all if other pooling standard features are appropriately tailored. However, a touch-base standard for the Appalachian and Southeast orders remains a critical feature of both orders because some criteria are needed to identify producers who are suppliers of supplemental milk to the two marketing areas and who thereby may be eligible for receiving a transportation credit.

Record evidence indicates that by reducing the touch-base days to one day per month, producers, especially cooperative member producers who bear the burden of supplying the vast majority of milk to the southeastern marketing areas, would avoid the cost of delivering their milk to pool plants when not necessarily needed. While a higher touch-base standard tends to support the integrity of the order's performance standards, the current touch-base standards are resulting in the uneconomic movement of milk solely for the purpose of meeting a pooling standard. The current touch-base standards of the two orders too often result in the substitution of local milk with the milk of more distant producers thus displacing the milk of local producers supplying the market. The milk of local producers needlessly incurs the cost of being transported to more distant locations. As a result of the current touch-base standard, hauling and marketing costs are needlessly higher and the supply of milk from distant producers may still not be available to serve the Class I needs of the two marketing areas.

For the reasons discussed above, this decision finds that the current diversion limit standards of the Appalachian and Southeast orders results in the pooling of more milk than can reasonably be considered as actually serving the market's Class I needs and are lowered to those proposed by DCMA. Additionally, the lowering of touch-base days, in light of the tightening of the diversion limit standards, does not compromise the integrity of the orders' pooling standards. Together with the adopted diversion limit standards, a lower touch-base standard for the two orders offers operational cost savings to producers supplying the market with Class I milk while simultaneously providing for better identification of the milk of those producers who regularly and consistently service the markets' Class I needs.

Until December 2006, the transportation credit balancing provisions of the Appalachian and Southeast orders allowed supplemental milk loads to be used as a platform from which to pool additional milk on the order through the diversion process. Official notice is taken of the tentative partial decision concerning milk in the Appalachian and Southeast marketing areas issued September 1, 2006, and published September 13, 2006 (71 FR 54118) and the Interim Rule issued October 19, 2006 and published October 25, 2006 (71 FR 62337). In discussing the need for revised diversion limit standards for the Appalachian and Southeast orders it is necessary to consider the findings of that decision.

The September 2006 decision referenced above established a zero diversion limit standard on supplemental milk supplies seeking a transportation credit payment. An important finding in that decision regarding diversions associated with supplemental milk was that pooling such diverted milk would provide additional revenue to help offset hauling costs not covered by the transportation credit rates in place for the Appalachian and Southeast orders at that time. The adoption of a variable mileage rate factor that reimburses hauling costs on supplemental milk at a level more reflective of actual costs was found to diminish the need to seek and generate such revenue to offset hauling costs at the expense of the local producers who are regularly and consistently supplying milk for Class I needs. This decision adopts tighter diversion limit standards, especially for the Southeast order. Together with providing for higher Class I prices, tighter diversion limit standards should result in more orderly marketing conditions because the need to pool much more milk on the orders than regularly and consistently serves the Class I needs of the markets needlessly lowers the blend price of producers who regularly and consistently service such Class I needs.

Transportation Credit Balancing Fund Provisions

Changes to the Appalachian and Southeast order transportation credit balancing fund provisions proposed by DCMA are adopted immediately. Specifically, these changes include: (1) Extending the number of months that transportation credit balancing funds will be paid to include the months of January and February. The month of June will continue to be a month for the payment of transportation credits if requested and approved by the Market Administrator; (2) Expanding the payment of transportation credits for supplemental milk to include the full load of milk; (3) Providing more flexibility in determining the qualification requirements for supplemental milk producers to receive transportation credit payments; and (4) increasing the monthly transportation credit balancing fund assessment rate for the Southeast order from the current $0.20 per cwt to $0.30 per cwt.

The transportation credit balancing fund provisions for both orders (and predecessor orders) were established in

1996 as a result of the consistent need to import supplemental milk for fluid use during certain times of the year when local production is not sufficient to meet the fluid needs of the markets. Specifically, the Market Administrator applies a monthly transportation credit balancing fund assessment on all dispositions of Class I milk. The assessment rate is currently $0.15 per cwt and $0.20 per cwt for the Appalachian and Southeast orders, respectively. Transportation credit payments are paid from each order's transportation credit balancing fund during the months of July through December to help offset the cost of transporting such supplemental milk for Class I use. The transportation credit balancing funds operate independently from the producer-settlement funds of the two orders. Milk from producers who are located outside of the two marketing areas and who not part of the regular and consistent supply of Class I milk is commonly referred to as supplemental milk.

The record reveals that the seasonal swings in milk production can and does lead to inadequate milk supplies for fluid use in certain months and surplus supplies in other months. In the Appalachian and Southeast orders, the summer and fall (and sometimes winter) months are generally considered those months with inadequate (tight) milk supplies for fluid use, while the spring months are generally characterized as having sufficient supplies of milk for fluid uses. Transportation credits are used as a method to compensate handlers that provide supplemental milk during the tight supply months by offsetting some of the costs of transporting milk to the two marketing areas.

Currently, the payment of transportation credits under the Appalachian and Southeast orders is only made during the months of July through December. A feature of DCMA's proposal seeks to extend such payments to also include the months of January and February. Record evidence demonstrates reliance on supplemental milk supplies for each order's marketing area and the months of January and February showing similar demand for supplemental milk supplies.

Declining local milk production in the southeastern region of the country is well-known and is a chronic problem. Record evidence indicates milk production from producers located in both the Appalachian and Southeast marketing areas (pooled on any order) has continued to decrease since 2004. Specifically, evidence shows that annual milk production pooled on the Appalachian order has decreased from approximately 3.94 billion pounds in 2004 to about 3.77 billion pounds in 2006. For the Southeast order, milk production has declined from 5.0 billion pounds in 2004 to 4.76 billion pounds in 2006. Furthermore, record evidence illustrates that total milk production in the southeastern states of the U.S. has declined on average almost 2 percent each year since 1986 and has decreased a total of 34.6 percent since 1986—from 18.29 billion pounds in 1986 to 11.96 billion pounds in 2006.

In each of the years of 2004, 2005 and 2006, the months of July through January were deficit in terms of monthly in-area milk production (milk produced within the geographical boundaries of the two marketing areas) being consistently less than the monthly Class I producer milk pooled on the Appalachian and Southeast orders. The in-area deficit in January for both orders for all three years combined totaled 8.4 million pounds. While February in-area milk production for all three years exceeded Class I demands, that surplus decreased from over 44 million pounds in 2004 to just under 14 million pounds in 2006—a decrease of over 68 percent.

Record evidence reveals that the months of January and February are likely to become months during which local in-area milk production will no longer satisfy Class I demands and the Appalachian and Southeast marketing areas will need to increasingly rely on supplemental milk supplies to satisfy Class I demands. Accordingly, expanding the transportation credit payment months to include the months of January and February for the payment of transportation credits is reasonable. June will continue to be an optional month for transportation credit payments, if requested, to be reviewed and authorized by the Market Administrator.

Currently, transportation credits are paid on loads of milk at the lower of the receiving plant's Class I use or the marketwide Class I utilization. DCMA's proposals seek to change these criteria by having the entire load of supplemental milk eligible to receive a transportation credit. The major justification offered by DCMA is that the cost of transporting supplemental milk, regardless of the plant's use of that milk, is the same. This decision finds that a supplier of supplemental milk sources and assembles milk demanded by distributing plants for fluid uses, but no distributing plant disposes 100 percent of its milk receipts as Class I sales. The supplemental milk supplier does not know how a receiving plant will use the supplemental milk it receives. However, it is reasonable to conclude that plants do not seek supplemental milk supplies without first having the demand for Class I use. In other words, the need for supplemental milk supplies is fueled by Class I demands that cannot be satisfied in the absence of transportation credits. It is unlikely that supplemental milk suppliers would supply full milk loads to Class I plants if the demand for milk was not at least equal to its Class I disposition, even if it has some actual lower-valued use of milk.

The current calculation of transportation credit payments in the Appalachian and Southeast orders contain a number of features to prevent offsetting the full cost of transporting supplemental milk into the marketing areas. It contains features preventing pooling milk on the orders that does not regularly and consistently supply the fluid needs of the two marketing areas. Most important is the feature denying the ability to pool milk by diversion on the basis of supplemental milk deliveries to plants in the two orders. Current transportation credit provisions prohibit pooling diverted milk on the Appalachian and Southeast orders on loads of supplemental milk seeking a transportation credit and this prohibition is continued by its adoption in this decision.

It is too early to know what effect establishing a zero diversion limit standard on supplemental milk loads will have on the total volume of milk pooled because this prohibition was only implemented in December 2006 in both orders. Nevertheless, because supplemental milk can no longer form a basis from which to pool milk through the diversion process, it is reasonable to conclude that the marketwide Class I utilization of the orders will likely increase. However, this improvement alone will not likely result in offsetting the costs incurred by supplemental milk suppliers who both assemble and transport milk to plants regulated by the two orders to satisfy Class I demands.

Record evidence reveals that the Appalachian and Southeast marketing areas experience differing costs in supplying supplemental milk to meet Class I needs that are reflected in the two orders having different transportation credit assessment rates. In recent years the transportation credit reimbursement on claims for the Southeast order have been prorated at greater rates and more often than those of the Appalachian order. As discussed in the September 13, 2006 published tentative decision for the Appalachian and Southeast orders (71 FR 54118), the Appalachian marketing area receives the majority of its supplemental milk

supplies from the northern, Mid-Atlantic States. The Southeast marketing area receives the majority of its supply from the Midwest and southwestern states. The location of supplemental milk supplies for the Southeast marketing area therefore tends to be more distant from the marketing area than that for the Appalachian marketing area.

The need to again raise the monthly transportation credit assessment rate for the Southeast order is in part explained by the continuing need of the Southeast marketing area to reach even farther to source milk supplies to satisfy fluid demands. Additionally, expanding the payment of transportation credits on the entire load of supplemental milk also will likely increase the payment of transportation credit claims. At the same time, payment of transportation credit claims will be offset by the adopted changes to the Class I pricing surface because the calculation for determining payment considers the change in Class I pricing values between the origin of supplemental milk and the point where it is delivered. As discussed above, the need for supplemental milk supplies is fueled by the marketing areas Class I demand.

Precautionary measures are currently provided in the transportation credit provisions such that the rate of assessments beyond actual handler claims is unlikely. The transportation credit provisions provide the Market Administrators the authority to reduce or waive assessments as necessary to maintain sufficient fund balances to pay the transportation credits claims. Therefore, increasing the maximum transportation credit assessment rates will not result in an accumulation of funds beyond what is needed to pay transportation credit claims.

The record supports concluding that local milk production is expected to continue declining within both marketing areas. This will result in an even greater reliance on supplemental milk to meet the fluid milk needs of the markets. Record evidence shows a constant increase in both the volume and distance of supplemental milk supplies, especially for the Southeast marketing area. As such, it is reasonable that future transportation credit claims will increase. In this regard, it is important to prevent exhausting the transportation credit balancing fund before the payment of claims on supplemental milk. Doing so is consistent with the fundamental purposes of the transportation credit provisions.

The adopted increases in Class I prices will likely alter the payout of transportation credit claims because the differences in origin and delivery point Class I prices are increased. However, adoption of expanded transportation credit payment months to include January and February, as well as payments on the entire load of milk, will tend to offset the payout on transportation credit claims resulting from the adopted changes in Class I pricing.

An increase in the transportation credit assessment for the Appalachian order was not requested because 100 percent of the transportation credit requests were paid in 2006 and in January 2007. Data show that even with adoption of the proposed Class I prices, pooling requirements and transportation credit provisions, the transportation credit assessment of $0.15 per cwt in the Appalachian order should continue to be sufficient to pay future transportation credit requests.

The record indicates that the actual transportation credits paid in 2006 for the Appalachian order totaled $3,313,590. Had the current mileage rate factor (MRF) been in effect for all of 2006, transportation credit payments for the Appalachian order would have totaled $4,433,854, including the actual payment for January 2007 and an estimated payment for February. Analysis suggests that with the current MRF and proposed Class I prices in place, the total transportation credits paid during 2006 would have been about $456,000 less than the actual total transportation credit payments. Using Market Administrator data with the variable MRF based on 2006 calculated monthly averages ($0.044 per cwt per ten miles), paying of transportation credit claims on full loads of milk, and the proposed Class I price adjustments, the total transportation credits paid for 2006 in the Appalachian order would have totaled $4,073,312. This is $360,000 less than what would have been paid with the MRF and the lower of a plant's Class I use or marketwide Class I utilization. Accordingly, the current $0.15 assessment rate for the Appalachian order appears to be sufficient to meet all claims even when paying transportation credits on full loads of milk delivered to Class I plants regulated by the order.

The record indicates that for the past three years, the transportation credit balancing fund for the Southeast order has been insufficient to pay transportation credit claims. Record evidence indicates that during 2006, Southeast order transportation credit payments were prorated to 81, 36, 39 and 64 percent of the transportation credit claims for the months of September, October, November and December, respectively. Such transportation credit claims also have increased in number of pounds and in number of miles. Specifically, the total pounds claimed for the receipt of transportation credits has increased from 374 million pounds for July through December 2000 to 820 million pounds for July through December 2006—an increase of 119 percent.

Increasing the maximum transportation credit assessment for the Southeast order should not result in an unnecessary accumulation of funds. For the Southeast order, the record indicates that transportation credits paid in 2006 would have totaled $15,704,872 for the month of July through December and would have totaled $18,604,872 by including the months of January and February. This analysis is based on using the same MRF of $0.044 as in the Appalachian order analysis, paying of transportation credit claims on full loads of milk, and with the proposed Class I price adjustments. However, the current assessment rate of $0.20 per cwt falls far short of the total revenue needed to pay all expected transportation credit claims. Even a $0.30 per cwt assessment may not generate sufficient revenue to meet all expected claims on full loads of supplemental milk. Nevertheless, it is a superior assessment rate than the current rate of $0.20 per cwt.

Determining those producers eligible to receive a transportation credit on their supplemental milk deliveries requires that the dairy farm must be located outside either the Appalachian or the Southeast marketing areas, the producer must not meet the *producer* definition of the orders during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the milk production of the dairy farmer during those two months, in aggregate, can be received as producer milk under the order during those 2 months.

DCMA has proposed that these requirements for the Appalachian and Southeast orders be made more flexible without substantially changing the identification of milk that is not a regular part of the supply of milk to the two orders. Specifically proposed is that a dairy farmer must not be a producer on the orders of more than 45 of the 92 days in the months March through May or must have less than 50 percent of the producer's milk pooled on the orders during those three months combined.

On the basis of record testimony, this is a reasonable change. Specifically, it represents a change that provides flexibility in identifying supplemental

milk producers and may result in lower operational costs to those producers incurring the costs of supplying supplemental milk to the Appalachian and Southeast marketing areas. Additionally, February is currently a month when a supplemental milk producer may not participate in either order's marketwide pool. Since this decision adopts providing for the month of February as a month in which transportation credit payments can be made, it is necessary to redefine the months in which a producer may not be pooled on either order. Accordingly, changing these features of the orders' transportation credit balancing fund provisions are reasonable.

The adopted changes are detailed in the order language provided below.

4. Determining Whether Emergency Marketing Conditions Exist That Would Warrant Omission of a Recommended Decision and Opportunity To File Written Exceptions

Evidence presented at the hearing and in post-hearing briefs establishes that several provisions of the three southeastern milk marketing orders are inadequate to meet the objectives of such orders. The inadequacies are contributing to a rapid decline in local milk production relative to population such that the orders are not setting prices that generate sufficient revenue to attract an adequate supply of milk for fluid use from local milk production, from sources outside of the marketing areas or some combination of both. The adopted changes to the Appalachian, Southeast, and Florida orders form an integrated package of simultaneous changes necessary to improve the marketing conditions of the southeastern region that no single change can be reasonably expected to accomplish. By increasing revenue through adjustment of minimum Class I prices, better defining the milk of those producers who consistently and regularly supply the Class I needs of the Appalachian and Southeast marketing areas, and providing for more flexible eligibility criteria and expanded payment of transportation credits to those who supply the Appalachian and Southeast marketing areas with supplemental milk supplies, the southeastern region will be better assured an adequate supply of milk for fluid uses. The record also contains requests by numerous parties that the adopted amendments should be implemented on an emergency basis. Consequently, it is determined that emergency marketing conditions exist that warrant omitting the issuance of a recommended decision. The record clearly establishes a basis as noted above for amending the orders on an interim basis. The opportunity to file written exceptions to the proposed amended orders remains.

Conforming Changes

Conforming changes are hereby made to Part 1000.50 Class prices, component prices, and advanced pricing factors. Specifically, the Class I skim milk price and the Class I butterfat price provisions need to be changed in order to conform with the amendments adopted in this proceeding as provided for in Proposal 7 of the hearing notice. The changes to 7 CFR Part 1000.50 (b) and (c) include reference to the adjustments adopted to Class I prices specified in 7 CFR 1005.51(b), 1006.51(b) and 1007.51(b).

In view of these findings, an interim final rule amending the orders will be issued as soon as the procedures to determine the approval of producers are completed.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the claims to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian, Florida and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the aforesaid marketing agreements and orders:

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable with respect to the price of feeds, available supplies of feeds, and other economic conditions that affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, ensure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing have been held.

Interim Marketing Agreement and Interim Order Amending the Order

Annexed hereto and made a part hereof are two documents—an Interim Marketing Agreement regulating the handling of milk and an Interim Order amending the order regulating the handling of milk in the Appalachian, Florida and Southeast marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire tentative partial decision and the interim orders and the interim marketing agreements annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

The month of June 2007 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Florida and Southeast marketing areas is approved or favored by producers, as defined under the terms of the order as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Parts 1005, 1006 and 1007

Milk marketing order.

Dated: February 25, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Interim Order Amending the Order Regulating the Handling of Milk in the Appalachian, Florida and Southeast Marketing Areas

This interim order shall not become effective until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida and Southeast marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Appalachian, Florida and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

List of Subjects in 7 CFR Parts 1000, 1005, 1006, and 1007

Milk marketing orders.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend Chapter X of Title 7 of the Code of Federal Regulations as follows:

1. The authority citation for 7 CFR parts 1000, 1005, 1006 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1000—[AMENDED]

2. Amend § 1000.50 by revising paragraphs (b) and (c) to read as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(b) Class I skim milk price. The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52, plus the adjustment to Class I prices specified in § 1005.51(b), § 1006.51(b) and § 1007.51(b), plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) Class I butterfat price. The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the adjustments to Class I prices specified in § 1005.51(b), 1006.51(b) and 1007.51(b) divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

* * * * *

PART 1005—[AMENDED]

3. Revise § 1005.51 to read as follows:

§ 1005.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1005.50(a) for Mecklenburg County, North Carolina.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 1000.50(a), (b) and (c) using the following adjustments:

State	County/Parish	FIPS	Class I price adjustment
GA	CATOOSA	13047	0.60
GA	CHATTOOGA	13055	0.60
GA	DADE	13083	0.60
GA	FANNIN	13111	0.60
GA	MURRAY	13213	0.60
GA	WALKER	13295	0.60
GA	WHITFIELD	13313	0.60
IN	CLARK	18019	0.10
IN	CRAWFORD	18025	0.10
IN	DAVIESS	18027	0.10
IN	DUBOIS	18037	0.10
IN	FLOYD	18043	0.10
IN	GIBSON	18051	0.10
IN	GREENE	18055	0.10
IN	HARRISON	18061	0.10
IN	KNOX	18083	0.10
IN	MARTIN	18101	0.10
IN	ORANGE	18117	0.10
IN	PERRY	18123	0.10
IN	PIKE	18125	0.10
IN	POSEY	18129	0.10
IN	SCOTT	18143	0.10
IN	SPENCER	18147	0.10
IN	SULLIVAN	18153	0.10
IN	VANDERBURGH	18163	0.10
IN	WARRICK	18173	0.10
IN	WASHINGTON	18175	0.10
KY	ADAIR	21001	0.20

State	County/Parish	FIPS	Class I price adjustment
KY	ANDERSON	21005	0.40
KY	BATH	21011	0.40
KY	BELL	21013	0.50
KY	BOURBON	21017	0.40
KY	BOYLE	21021	0.40
KY	BREATHITT	21025	0.70
KY	BRECKINRIDGE	21027	0.10
KY	BULLITT	21029	0.10
KY	BUTLER	21031	0.20
KY	CARROLL	21041	0.10
KY	CARTER	21043	0.40
KY	CASEY	21045	0.20
KY	CLARK	21049	0.40
KY	CLAY	21051	0.50
KY	CLINTON	21053	0.50
KY	CUMBERLAND	21057	0.50
KY	DAVIESS	21059	0.10
KY	EDMONSON	21061	0.20
KY	ELLIOTT	21063	0.40
KY	ESTILL	21065	0.40
KY	FAYETTE	21067	0.40
KY	FLEMING	21069	0.40
KY	FRANKLIN	21073	0.10
KY	GALLATIN	21077	0.10
KY	GARRARD	21079	0.40
KY	GRAYSON	21085	0.20
KY	GREEN	21087	0.20
KY	HANCOCK	21091	0.10
KY	HARDIN	21093	0.10
KY	HARLAN	21095	0.50
KY	HART	21099	0.20
KY	HENDERSON	21101	0.10
KY	HENRY	21103	0.10
KY	HOPKINS	21107	0.20
KY	JACKSON	21109	0.70
KY	JEFFERSON	21111	0.10
KY	JESSAMINE	21113	0.40
KY	KNOTT	21119	0.50
KY	KNOX	21121	0.50
KY	LARUE	21123	0.40
KY	LAUREL	21125	0.50
KY	LEE	21129	0.40
KY	LESLIE	21131	0.50
KY	LETCHER	21133	0.50
KY	LINCOLN	21137	0.40
KY	MC CREARY	21147	0.50
KY	MC LEAN	21149	0.40
KY	MADISON	21151	0.40
KY	MARION	21155	0.40
KY	MEADE	21163	0.10
KY	MENIFEE	21165	0.40
KY	MERCER	21167	0.40
KY	MONTGOMERY	21173	0.40
KY	MORGAN	21175	0.40
KY	MUHLENBURG	21177	0.20
KY	NELSON	21179	0.10
KY	NICHOLAS	21181	0.40
KY	OHIO	21183	0.20
KY	OLDHAM	21185	0.10
KY	OWEN	21187	0.10
KY	OWSLEY	21189	0.70
KY	PERRY	21193	0.50
KY	POWELL	21197	0.40
KY	PULASKI	21199	0.50
KY	ROCKCASTLE	21203	0.70
KY	ROWAN	21205	0.40
KY	RUSSELL	21207	0.50
KY	SCOTT	21209	0.10
KY	SHELBY	21211	0.10
KY	SPENCER	21215	0.10
KY	TAYLOR	21217	0.20
KY	TRIMBLE	21223	0.10
KY	UNION	21225	0.10

State	County/Parish	FIPS	Class I price adjustment
KY	WASHINGTON	21229	0.40
KY	WAYNE	21231	0.50
KY	WEBSTER	21233	0.20
KY	WHITLEY	21235	0.50
KY	WOLFE	21237	0.40
KY	WOODFORD	21239	0.40
NC	ALAMANCE	37001	0.30
NC	ALEXANDER	37003	0.45
NC	ALLEGHANY	37005	0.45
NC	ANSON	37007	0.50
NC	ASHE	37009	0.45
NC	AVERY	37011	0.45
NC	BEAUFORT	37013	0.40
NC	BERTIE	37015	0.20
NC	BLADEN	37017	0.70
NC	BRUNSWICK	37019	0.70
NC	BUNCOMBE	37021	0.45
NC	BURKE	37023	0.45
NC	CABARRUS	37025	0.30
NC	CALDWELL	37027	0.45
NC	CAMDEN	37029	0.20
NC	CARTERET	37031	0.40
NC	CASWELL	37033	0.30
NC	CATAWBA	37035	0.30
NC	CHATHAM	37037	0.30
NC	CHEROKEE	37039	0.45
NC	CHOWAN	37041	0.20
NC	CLAY	37043	0.45
NC	CLEVELAND	37045	0.30
NC	COLUMBUS	37047	0.70
NC	CRAVEN	37049	0.40
NC	CUMBERLAND	37051	0.30
NC	CURRITUCK	37053	0.20
NC	DARE	37055	0.40
NC	DAVIDSON	37057	0.30
NC	DAVIE	37059	0.30
NC	DUPLIN	37061	0.30
NC	DURHAM	37063	0.30
NC	EDGECOMBE	37065	0.20
NC	FORSYTH	37067	0.30
NC	FRANKLIN	37069	0.30
NC	GASTON	37071	0.30
NC	GATES	37073	0.20
NC	GRAHAM	37075	0.45
NC	GRANVILLE	37077	0.30
NC	GREENE	37079	0.40
NC	GUILFORD	37081	0.30
NC	HALIFAX	37083	0.30
NC	HARNETT	37085	0.10
NC	HAYWOOD	37087	0.45
NC	HENDERSON	37089	0.45
NC	HERTFORD	37091	0.20
NC	HOKE	37093	0.30
NC	HYDE	37095	0.40
NC	IREDELL	37097	0.30
NC	JACKSON	37099	0.45
NC	JOHNSTON	37101	0.20
NC	JONES	37103	0.40
NC	LEE	37105	0.30
NC	LENOIR	37107	0.40
NC	LINCOLN	37109	0.30
NC	MC DOWELL	37111	0.45
NC	MACON	37113	0.45
NC	MADISON	37115	0.45
NC	MARTIN	37117	0.40
NC	MECKLENBURG	37119	0.30
NC	MITCHELL	37121	0.45
NC	MONTGOMERY	37123	0.30
NC	MOORE	37125	0.30
NC	NASH	37127	0.30
NC	NEW HANOVER	37129	0.70
NC	NORTHAMPTON	37131	0.30
NC	ONSLOW	37133	0.30

State	County/Parish	FIPS	Class I price adjustment
NC	ORANGE	37135	0.30
NC	PAMLICO	37137	0.40
NC	PASQUOTANK	37139	0.20
NC	PENDER	37141	0.70
NC	PERQUIMANS	37143	0.20
NC	PERSON	37145	0.30
NC	PITT	37147	0.40
NC	POLK	37149	0.30
NC	RANDOLPH	37151	0.30
NC	RICHMOND	37153	0.50
NC	ROBESON	37155	0.70
NC	ROCKINGHAM	37157	0.45
NC	ROWAN	37159	0.30
NC	RUTHERFORD	37161	0.30
NC	SAMPSON	37163	0.30
NC	SCOTLAND	37165	0.30
NC	STANLY	37167	0.30
NC	STOKES	37169	0.45
NC	SURRY	37171	0.45
NC	SWAIN	37173	0.45
NC	TRANSYLVANIA	37175	0.45
NC	TYRRELL	37177	0.40
NC	UNION	37179	0.50
NC	VANCE	37181	0.30
NC	WAKE	37183	0.30
NC	WARREN	37185	0.30
NC	WASHINGTON	37187	0.40
NC	WATAUGA	37189	0.45
NC	WAYNE	37191	0.40
NC	WILKES	37193	0.45
NC	WILSON	37195	0.20
NC	YADKIN	37197	0.30
NC	YANCEY	37199	0.45
SC	ABBEVILLE	45001	0.50
SC	AIKEN	45003	0.70
SC	ALLENDALE	45005	1.00
SC	ANDERSON	45007	0.50
SC	BAMBERG	45009	0.70
SC	BARNWELL	45011	0.70
SC	BEAUFORT	45013	1.00
SC	BERKELEY	45015	1.00
SC	CALHOUN	45017	0.70
SC	CHARLESTON	45019	1.00
SC	CHEROKEE	45021	0.50
SC	CHESTER	45023	0.50
SC	CHESTERFIELD	45025	0.30
SC	CLARENDON	45027	0.70
SC	COLLETON	45029	1.00
SC	DARLINGTON	45031	0.70
SC	DILLON	45033	0.70
SC	DORCHESTER	45035	1.00
SC	EDGEFIELD	45037	0.30
SC	FAIRFIELD	45039	0.30
SC	FLORENCE	45041	0.70
SC	GEORGETOWN	45043	0.70
SC	GREENVILLE	45045	0.50
SC	GREENWOOD	45047	0.50
SC	HAMPTON	45049	1.00
SC	HORRY	45051	0.70
SC	JASPER	45053	1.00
SC	KERSHAW	45055	0.30
SC	LANCASTER	45057	0.50
SC	LAURENS	45059	0.50
SC	LEE	45061	0.70
SC	LEXINGTON	45063	0.70
SC	MC CORMICK	45065	0.50
SC	MARION	45067	0.70
SC	MARLBORO	45069	0.70
SC	NEWBERRY	45071	0.30
SC	OCONEE	45073	0.50
SC	ORANGEBURG	45075	0.70
SC	PICKENS	45077	0.50
SC	RICHLAND	45079	0.70

State	County/Parish	FIPS	Class I price adjustment
SC	SALUDA	45081	0.30
SC	SPARTANBURG	45083	0.50
SC	SUMTER	45085	0.70
SC	UNION	45087	0.50
SC	WILLIAMSBURG	45089	0.70
SC	YORK	45091	0.50
TN	ANDERSON	47001	0.40
TN	BLOUNT	47009	0.40
TN	BRADLEY	47011	0.60
TN	CAMPBELL	47013	0.40
TN	CARTER	47019	0.40
TN	CLAIBORNE	47025	0.40
TN	COCKE	47029	0.40
TN	CUMBERLAND	47035	0.40
TN	GRAINGER	47057	0.40
TN	GREENE	47059	0.40
TN	HAMBLEN	47063	0.40
TN	HAMILTON	47065	0.60
TN	HANCOCK	47067	0.40
TN	HAWKINS	47073	0.40
TN	JEFFERSON	47089	0.40
TN	JOHNSON	47091	0.40
TN	KNOX	47093	0.40
TN	LOUDON	47105	0.40
TN	MC MINN	47107	0.60
TN	MARION	47115	0.60
TN	MEIGS	47121	0.60
TN	MONROE	47123	0.60
TN	MORGAN	47129	0.40
TN	POLK	47139	0.60
TN	RHEA	47143	0.40
TN	ROANE	47145	0.40
TN	SCOTT	47151	0.10
TN	SEQUATCHIE	47153	0.40
TN	SEVIER	47155	0.40
TN	SULLIVAN	47163	0.40
TN	UNICOI	47171	0.40
TN	UNION	47173	0.40
TN	WASHINGTON	47179	0.40
VA	ALLEGHANY	51005	0.10
VA	AMHERST	51009	0.40
VA	AUGUSTA	51015	0.10
VA	BATH	51017	0.10
VA	BEDFORD	51019	0.40
VA	BLAND	51021	0.40
VA	BOTETOURT	51023	0.10
VA	BUCHANAN	51027	0.10
VA	CAMPBELL	51031	0.40
VA	CARROLL	51035	0.40
VA	CRAIG	51045	0.10
VA	DICKENSON	51051	0.40
VA	FLOYD	51063	0.40
VA	FRANKLIN	51067	0.40
VA	GILES	51071	0.10
VA	GRAYSON	51077	0.40
VA	HENRY	51089	0.40
VA	HIGHLAND	51091	0.10
VA	LEE	51105	0.40
VA	MONTGOMERY	51121	0.40
VA	PATRICK	51141	0.40
VA	PITTSYLVANIA	51143	0.40
VA	PULASKI	51155	0.40
VA	ROANOKE	51161	0.40
VA	ROCKBRIDGE	51163	0.10
VA	ROCKINGHAM	51165	0.10
VA	RUSSELL	51167	0.40
VA	SCOTT	51169	0.40
VA	SMYTH	51173	0.40
VA	TAZEWELL	51185	0.40
VA	WASHINGTON	51191	0.40
VA	WISE	51195	0.40
VA	WYTHE	51197	0.40
VA	BEDFORD CITY	51515	0.40

State	County/Parish	FIPS	Class I price adjustment
VA	BRISTOL CITY	51520	0.40
VA	BUENA VISTA CITY	51530	0.10
VA	CLIFTON FORGE CITY	51560	0.10
VA	COVINGTON CITY	51580	0.10
VA	DANVILLE CITY	51590	0.40
VA	GALAX CITY	51640	0.40
VA	HARRISONBURG CITY	51660	0.10
VA	LEXINGTON CITY	51678	0.10
VA	LYNCHBURG CITY	51680	0.40
VA	MARTINSVILLE CITY	51690	0.40
VA	NORTON CITY	51720	0.40
VA	RADFORD CITY	51750	0.40
VA	ROANOKE CITY	51770	0.40
VA	SALEM CITY	51775	0.40
VA	STAUNTON CITY	51790	0.10
VA	WAYNESBORO CITY	51820	0.10
WV	MC DOWELL	54047	0.10
WV	MERCER	54055	0.10

4. Amend § 1005.13 by revising paragraph (d)(1) through (4) to read as follows:

§ 1005.13 Producer Milk.

* * * * *

(d) * * *

(1) In any month of July through December, not less than 1 day's production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 1 day's production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from handler described in § 1000.9(c);

* * * * *

5. Amend § 1005.81 by revising (a) to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except) as provided in § 1009.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the Market Administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.15 per hundredweight or such lesser amount as the Market Administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period. In the event that during any month of the June–February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

* * * * *

6. Amend § 1005.82 by revising paragraphs (a)(1), (b), (c)(1), removing paragraph (c)(2)(i), revising paragraphs (d)(2) (iii), (d)(3)(v), and redesignating paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv) as (c)(2)(i), (c)(2)(ii) and (c)(2)(iii), and revising newly redesignated paragraphs (c)(2)(i) and (c)(2)(iii) to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, February and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

* * * * *

(b) The Market Administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the month of June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the Market Administrator shall notify the Deputy Administrator of the Dairy Programs and all handlers in

the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) * * *

(1) Bulk milk received at a pool distributing plant from a plant regulated under another Federal order, except Federal Order 1007; and

* * * * *

(2) * * *

(i) The dairy farmer was not a ''producer'' under this order for more than 45 days during the immediately preceding months of March through May, or not more than 50 percent of the production of the dairy farmer during those 3 months, in aggregate, was received as producer milk under this order during those 3 months; and

* * * * *

(iii) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(i) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(d) * * *

(2) * * *

(iii) Subtract the applicable Class I price specified in § 1000.50(a) for the county in which the shipping plant is located from the Class I price applicable for the county in which the receiving plant is located;

* * * * *

(3) * * *

(v) Subtract the Class I price specified in § 1000.50(a) applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location;

* * * * *

PART 1006—[AMENDED]

7. Revise § 1006.51 to read as follows:

§ 1006.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 000.52. The Class I price shall be the price computed pursuant to § 006.50 (a) for Hillsborough County, Florida.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 000.50 (a), (b) and (c) using the following adjustments:

State	County/Parish	FIPS	Class I price adjustment
FL	ALACHUA	12001	1.30
FL	BAKER	12003	1.30
FL	BAY	12005	0.60
FL	BRADFORD	12007	1.30
FL	BREVARD	12009	1.40
FL	BROWARD	12011	1.70
FL	CALHOUN	12013	0.60
FL	CHARLOTTE	12015	1.50
FL	CITRUS	12017	1.40
FL	CLAY	12019	1.30
FL	COLLIER	12021	1.70
FL	COLUMBIA	12023	1.30
FL	DADE	12025	1.70
FL	DE SOTO	12027	1.80
FL	DIXIE	12029	1.30
FL	DUVAL	12031	1.30
FL	FLAGLER	12035	1.00
FL	FRANKLIN	12037	0.90
FL	GADSDEN	12039	0.90
FL	GILCHRIST	12041	1.30
FL	GLADES	12043	1.50
FL	GULF	12045	0.90
FL	HAMILTON	12047	1.30
FL	HARDEE	12049	1.80
FL	HENDRY	12051	1.70
FL	HERNANDO	12053	1.40
FL	HIGHLANDS	12055	1.80
FL	HILLSBOROUGH	12057	1.40
FL	HOLMES	12059	0.60
FL	INDIAN RIVER	12061	1.80
FL	JACKSON	12063	0.60
FL	JEFFERSON	12065	0.90
FL	LAFAYETTE	12067	1.30
FL	LAKE	12069	1.40
FL	LEE	12071	1.70
FL	LEON	12073	0.90
FL	LEVY	12075	1.00
FL	LIBERTY	12077	0.90
FL	MADISON	12079	1.30
FL	MANATEE	12081	1.80
FL	MARION	12083	1.00
FL	MARTIN	12085	1.50
FL	MONROE	12087	1.70

State	County/Parish	FIPS	Class I price adjustment
FL	NASSAU	12089	1.30
FL	OKEECHOBEE	12093	1.80
FL	ORANGE	12095	1.40
FL	OSCEOLA	12097	1.40
FL	PALM BEACH	12099	1.70
FL	PASCO	12101	1.40
FL	PINELLAS	12103	1.40
FL	POLK	12105	1.40
FL	PUTNAM	12107	1.30
FL	SAINT JOHNS	12109	1.30
FL	SAINT LUCIE	12111	1.80
FL	SARASOTA	12115	1.80
FL	SEMINOLE	12117	1.40
FL	SUMTER	12119	1.40
FL	SUWANNEE	12121	1.30
FL	TAYLOR	12123	1.30
FL	UNION	12125	1.30
FL	VOLUSIA	12127	1.40
FL	WAKULLA	12129	0.90
FL	WASHINGTON	12133	0.60

PART 1007—[AMENDED]

8. Revise § 1007.51 to read as follows:

§ 1007.51 Class I differential, adjustments to Class I prices, and Class I price.

(a) The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1007.50(a) for Fulton County, Georgia.

(b) Adjustment to Class I prices. Class I prices shall be established pursuant to § 1000.50(a), (b) and (c) using the following adjustments:

State	County/Parish	FIPS	Class I price adjustment
AL	AUTAUGA	01001	0.50
AL	BALDWIN	01003	0.50
AL	BARBOUR	01005	0.55
AL	BIBB	01007	0.30
AL	BLOUNT	01009	0.20
AL	BULLOCK	01011	0.70
AL	BUTLER	01013	0.55
AL	CALHOUN	01015	0.30
AL	CHAMBERS	01017	0.70
AL	CHEROKEE	01019	0.30
AL	CHILTON	01021	0.70
AL	CHOCTAW	01023	0.50
AL	CLARKE	01025	0.35
AL	CLAY	01027	0.70
AL	CLEBURNE	01029	0.70
AL	COFFEE	01031	0.85
AL	COLBERT	01033	0.30
AL	CONECUH	01035	0.55
AL	COOSA	01037	0.70
AL	COVINGTON	01039	0.55
AL	CRENSHAW	01041	0.55
AL	CULLMAN	01043	0.20
AL	DALE	01045	0.85
AL	DALLAS	01047	0.50
AL	DE KALB	01049	0.40
AL	ELMORE	01051	0.50
AL	ESCAMBIA	01053	0.55
AL	ETOWAH	01055	0.30
AL	FAYETTE	01057	0.20
AL	FRANKLIN	01059	0.30
AL	GENEVA	01061	0.85
AL	GREENE	01063	0.30
AL	HALE	01065	0.30
AL	HENRY	01067	0.85
AL	HOUSTON	01069	0.85
AL	JACKSON	01071	0.40
AL	JEFFERSON	01073	0.30
AL	LAMAR	01075	0.20
AL	LAUDERDALE	01077	0.30
AL	LAWRENCE	01079	0.30

State	County/Parish	FIPS	Class I price adjustment
AL	LEE	01081	0.70
AL	LIMESTONE	01083	0.30
AL	LOWNDES	01085	0.70
AL	MACON	01087	0.70
AL	MADISON	01089	0.30
AL	MARENGO	01091	0.50
AL	MARION	01093	0.20
AL	MARSHALL	01095	0.40
AL	MOBILE	01097	0.50
AL	MONROE	01099	0.35
AL	MONTGOMERY	01101	0.70
AL	MORGAN	01103	0.30
AL	PERRY	01105	0.30
AL	PICKENS	01107	0.30
AL	PIKE	01109	0.55
AL	RANDOLPH	01111	0.70
AL	RUSSELL	01113	0.70
AL	SAINT CLAIR	01115	0.30
AL	SHELBY	01117	0.30
AL	SUMTER	01119	0.30
AL	TALLADEGA	01121	0.30
AL	TALLAPOOSA	01123	0.70
AL	TUSCALOOSA	01125	0.30
AL	WALKER	01127	0.20
AL	WASHINGTON	01129	0.35
AL	WILCOX	01131	0.50
AL	WINSTON	01133	0.20
AR	ARKANSAS	05001	0.00
AR	ASHLEY	05003	0.10
AR	BAXTER	05005	0.10
AR	BENTON	05007	0.10
AR	BOONE	05009	0.10
AR	BRADLEY	05011	0.30
AR	CALHOUN	05013	0.30
AR	CARROLL	05015	0.10
AR	CHICOT	05017	0.10
AR	CLARK	05019	0.00
AR	CLAY	05021	0.10
AR	CLEBURNE	05023	0.10
AR	CLEVELAND	05025	0.30
AR	COLUMBIA	05027	0.10
AR	CONWAY	05029	0.10
AR	CRAIGHEAD	05031	0.10
AR	CRAWFORD	05033	0.10
AR	CRITTENDEN	05035	0.10
AR	CROSS	05037	0.10
AR	DALLAS	05039	0.00
AR	DESHA	05041	0.30
AR	DREW	05043	0.30
AR	FAULKNER	05045	0.10
AR	FRANKLIN	05047	0.10
AR	FULTON	05049	0.10
AR	GARLAND	05051	0.10
AR	GRANT	05053	0.00
AR	GREENE	05055	0.10
AR	HEMPSTEAD	05057	0.30
AR	HOT SPRING	05059	0.00
AR	HOWARD	05061	0.00
AR	INDEPENDENCE	05063	0.10
AR	IZARD	05065	0.10
AR	JACKSON	05067	0.10
AR	JEFFERSON	05069	0.00
AR	JOHNSON	05071	0.10
AR	LAFAYETTE	05073	0.10
AR	LAWRENCE	05075	0.10
AR	LEE	05077	0.10
AR	LINCOLN	05079	0.30
AR	LITTLE RIVER	05081	0.30
AR	LOGAN	05083	0.10
AR	LONOKE	05085	0.10
AR	MADISON	05087	0.10
AR	MARION	05089	0.10
AR	MILLER	05091	0.10

State	County/Parish	FIPS	Class I price adjustment
AR	MISSISSIPPI	05093	0.30
AR	MONROE	05095	0.10
AR	MONTGOMERY	05097	0.10
AR	NEVADA	05099	0.30
AR	NEWTON	05101	0.10
AR	OUACHITA	05103	0.30
AR	PERRY	05105	0.10
AR	PHILLIPS	05107	0.00
AR	PIKE	05109	0.00
AR	POINSETT	05111	0.30
AR	POLK	05113	0.10
AR	POPE	05115	0.10
AR	PRAIRIE	05117	0.10
AR	PULASKI	05119	0.10
AR	RANDOLPH	05121	0.10
AR	SAINT FRANCIS	05123	0.10
AR	SALINE	05125	0.10
AR	SCOTT	05127	0.10
AR	SEARCY	05129	0.10
AR	SEBASTIAN	05131	0.10
AR	SEVIER	05133	0.00
AR	SHARP	05135	0.10
AR	STONE	05137	0.10
AR	UNION	05139	0.10
AR	VAN BUREN	05141	0.10
AR	WASHINGTON	05143	0.10
AR	WHITE	05145	0.10
AR	WOODRUFF	05147	0.10
AR	YELL	05149	0.10
FL	ESCAMBIA	12033	0.55
FL	OKALOOSA	12091	0.55
FL	SANTA ROSA	12113	0.55
FL	WALTON	12131	0.55
GA	APPLING	13001	1.15
GA	ATKINSON	13003	1.15
GA	BACON	13005	1.15
GA	BAKER	13007	0.85
GA	BALDWIN	13009	0.70
GA	BANKS	13011	0.70
GA	BARROW	13013	0.70
GA	BARTOW	13015	0.30
GA	BEN HILL	13017	1.15
GA	BERRIEN	13019	1.15
GA	BIBB	13021	0.70
GA	BLECKLEY	13023	1.00
GA	BRANTLEY	13025	1.15
GA	BROOKS	13027	1.15
GA	BRYAN	13029	1.15
GA	BULLOCH	13031	1.00
GA	BURKE	13033	0.70
GA	BUTTS	13035	0.70
GA	CALHOUN	13037	0.85
GA	CAMDEN	13039	1.15
GA	CANDLER	13043	1.00
GA	CARROLL	13045	0.70
GA	CHARLTON	13049	1.15
GA	CHATHAM	13051	1.15
GA	CHATTAHOOCHEE	13053	0.70
GA	CHEROKEE	13057	0.30
GA	CLARKE	13059	0.70
GA	CLAY	13061	0.85
GA	CLAYTON	13063	0.70
GA	CLINCH	13065	1.15
GA	COBB	13067	0.70
GA	COFFEE	13069	1.15
GA	COLQUITT	13071	1.15
GA	COLUMBIA	13073	0.70
GA	COOK	13075	1.15
GA	COWETA	13077	0.70
GA	CRAWFORD	13079	0.70
GA	CRISP	13081	0.85
GA	DAWSON	13085	0.30
GA	DECATUR	13087	1.15

State	County/Parish	FIPS	Class I price adjustment
GA	DE KALB	13089	0.70
GA	DODGE	13091	0.85
GA	DOOLY	13093	0.85
GA	DOUGHERTY	13095	0.85
GA	DOUGLAS	13097	0.70
GA	EARLY	13099	0.85
GA	ECHOLS	13101	1.15
GA	EFFINGHAM	13103	1.00
GA	ELBERT	13105	0.70
GA	EMANUEL	13107	1.00
GA	EVANS	13109	1.15
GA	FAYETTE	13113	0.70
GA	FLOYD	13115	0.30
GA	FORSYTH	13117	0.70
GA	FRANKLIN	13119	0.70
GA	FULTON	13121	0.70
GA	GILMER	13123	0.30
GA	GLASCOCK	13125	0.90
GA	GLYNN	13127	1.15
GA	GORDON	13129	0.30
GA	GRADY	13131	1.15
GA	GREENE	13133	0.70
GA	GWINNETT	13135	0.70
GA	HABERSHAM	13137	0.30
GA	HALL	13139	0.70
GA	HANCOCK	13141	0.70
GA	HARALSON	13143	0.70
GA	HARRIS	13145	0.70
GA	HART	13147	0.70
GA	HEARD	13149	0.70
GA	HENRY	13151	0.70
GA	HOUSTON	13153	0.70
GA	IRWIN	13155	1.15
GA	JACKSON	13157	0.70
GA	JASPER	13159	0.70
GA	JEFF DAVIS	13161	1.15
GA	JEFFERSON	13163	0.70
GA	JENKINS	13165	1.00
GA	JOHNSON	13167	1.00
GA	JONES	13169	0.70
GA	LAMAR	13171	0.70
GA	LANIER	13173	1.15
GA	LAURENS	13175	1.00
GA	LEE	13177	0.85
GA	LIBERTY	13179	1.15
GA	LINCOLN	13181	0.70
GA	LONG	13183	1.15
GA	LOWNDES	13185	1.15
GA	LUMPKIN	13187	0.30
GA	MC DUFFIE	13189	0.70
GA	MC INTOSH	13191	1.15
GA	MACON	13193	0.70
GA	MADISON	13195	0.70
GA	MARION	13197	0.70
GA	MERIWETHER	13199	0.70
GA	MILLER	13201	0.85
GA	MITCHELL	13205	1.15
GA	MONROE	13207	0.70
GA	MONTGOMERY	13209	1.15
GA	MORGAN	13211	0.70
GA	MUSCOGEE	13215	0.70
GA	NEWTON	13217	0.70
GA	OCONEE	13219	0.70
GA	OGLETHORPE	13221	0.70
GA	PAULDING	13223	0.70
GA	PEACH	13225	0.70
GA	PICKENS	13227	0.30
GA	PIERCE	13229	1.15
GA	PIKE	13231	0.70
GA	POLK	13233	0.70
GA	PULASKI	13235	0.85
GA	PUTNAM	13237	0.70
GA	QUITMAN	13239	0.85

State	County/Parish	FIPS	Class I price adjustment
GA	RABUN	13241	0.30
GA	RANDOLPH	13243	0.85
GA	RICHMOND	13245	0.70
GA	ROCKDALE	13247	0.70
GA	SCHLEY	13249	0.70
GA	SCREVEN	13251	1.00
GA	SEMINOLE	13253	1.15
GA	SPALDING	13255	0.70
GA	STEPHENS	13257	0.30
GA	STEWART	13259	0.55
GA	SUMTER	13261	0.85
GA	TALBOT	13263	0.70
GA	TALIAFERRO	13265	0.70
GA	TATTNALL	13267	1.15
GA	TAYLOR	13269	0.70
GA	TELFAIR	13271	1.15
GA	TERRELL	13273	0.85
GA	THOMAS	13275	1.15
GA	TIFT	13277	1.15
GA	TOOMBS	13279	1.15
GA	TOWNS	13281	0.30
GA	TREUTLEN	13283	1.00
GA	TROUP	13285	0.70
GA	TURNER	13287	0.85
GA	TWIGGS	13289	0.70
GA	UNION	13291	0.30
GA	UPSON	13293	0.70
GA	WALTON	13297	0.70
GA	WARE	13299	1.15
GA	WARREN	13301	0.70
GA	WASHINGTON	13303	0.70
GA	WAYNE	13305	1.15
GA	WEBSTER	13307	0.55
GA	WHEELER	13309	1.15
GA	WHITE	13311	0.30
GA	WILCOX	13315	0.85
GA	WILKES	13317	0.70
GA	WILKINSON	13319	0.70
GA	WORTH	13321	0.85
KY	ALLEN	21003	0.20
KY	BALLARD	21007	0.30
KY	BARREN	21009	0.20
KY	CALDWELL	21033	0.20
KY	CALLOWAY	21035	0.30
KY	CARLISLE	21039	0.30
KY	CHRISTIAN	21047	0.20
KY	CRITTENDEN	21055	0.20
KY	FULTON	21075	0.30
KY	GRAVES	21083	0.30
KY	HICKMAN	21105	0.30
KY	LIVINGSTON	21139	0.30
KY	LOGAN	21141	0.20
KY	LYON	21143	0.20
KY	MC CRACKEN	21145	0.30
KY	MARSHALL	21157	0.30
KY	METCALFE	21169	0.20
KY	MONROE	21171	0.50
KY	SIMPSON	21213	0.20
KY	TODD	21219	0.20
KY	TRIGG	21221	0.20
KY	WARREN	21227	0.20
LA	ACADIA	22001	0.30
LA	ALLEN	22003	0.30
LA	ASCENSION	22005	0.20
LA	ASSUMPTION	22007	0.20
LA	AVOYELLES	22009	0.00
LA	BEAUREGARD	22011	0.30
LA	BIENVILLE	22013	0.00
LA	BOSSIER	22015	0.10
LA	CADDO	22017	0.10
LA	CALCASIEU	22019	0.30
LA	CALDWELL	22021	0.00
LA	CAMERON	22023	0.20

State	County/Parish	FIPS	Class I price adjustment
LA	CATAHOULA	22025	0.00
LA	CLAIBORNE	22027	0.10
LA	CONCORDIA	22029	0.00
LA	DE SOTO	22031	0.00
LA	EAST BATON ROUGE	22033	0.20
LA	EAST CARROLL	22035	0.20
LA	EAST FELICIANA	22037	0.30
LA	EVANGELINE	22039	0.30
LA	FRANKLIN	22041	0.00
LA	GRANT	22043	0.00
LA	IBERIA	22045	0.20
LA	IBERVILLE	22047	0.20
LA	JACKSON	22049	0.00
LA	JEFFERSON	22051	0.20
LA	JEFFERSON DAVIS	22053	0.30
LA	LAFAYETTE	22055	0.20
LA	LAFOURCHE	22057	0.20
LA	LA SALLE	22059	0.00
LA	LINCOLN	22061	0.10
LA	LIVINGSTON	22063	0.20
LA	MADISON	22065	0.00
LA	MOREHOUSE	22067	0.10
LA	NATCHITOCHES	22069	0.00
LA	ORLEANS	22071	0.20
LA	OUACHITA	22073	0.10
LA	PLAQUEMINES	22075	0.20
LA	POINTE COUPEE	22077	0.30
LA	RAPIDES	22079	0.00
LA	RED RIVER	22081	0.00
LA	RICHLAND	22083	0.20
LA	SABINE	22085	0.00
LA	SAINT BERNARD	22087	0.20
LA	SAINT CHARLES	22089	0.20
LA	SAINT HELENA	22091	0.30
LA	SAINT JAMES	22093	0.20
LA	SAINT JOHN THE BAPTIST	22095	0.20
LA	SAINT LANDRY	22097	0.30
LA	SAINT MARTIN	22099	0.20
LA	SAINT MARY	22101	0.20
LA	SAINT TAMMANY	22103	0.30
LA	TANGIPAHOA	22105	0.20
LA	TENSAS	22107	0.00
LA	TERREBONNE	22109	0.20
LA	UNION	22111	0.10
LA	VERMILION	22113	0.20
LA	VERMILION	22113	0.20
LA	VERNON	22115	0.00
LA	WASHINGTON	22117	0.30
LA	WEBSTER	22119	0.10
LA	WEST BATON ROUGE	22121	0.20
LA	WEST CARROLL	22123	0.10
LA	WEST FELICIANA	22125	0.30
LA	WINN	22127	0.00
MS	ADAMS	28001	0.00
MS	ALCORN	28003	0.30
MS	AMITE	28005	0.40
MS	ATTALA	28007	0.20
MS	BENTON	28009	0.30
MS	BOLIVAR	28011	0.10
MS	CALHOUN	28013	0.10
MS	CARROLL	28015	0.20
MS	CHICKASAW	28017	0.10
MS	CHOCTAW	28019	0.20
MS	CLAIBORNE	28021	0.10
MS	CLARKE	28023	0.50
MS	CLAY	28025	0.20
MS	COAHOMA	28027	0.30
MS	COPIAH	28029	0.10
MS	COVINGTON	28031	0.00
MS	DE SOTO	28033	0.00
MS	FORREST	28035	0.40
MS	FRANKLIN	28037	0.00
MS	GEORGE	28039	0.40

State	County/Parish	FIPS	Class I price adjustment
MS	GREENE	28041	0.40
MS	GRENADA	28043	0.10
MS	HANCOCK	28045	0.30
MS	HARRISON	28047	0.30
MS	HINDS	28049	0.00
MS	HOLMES	28051	0.20
MS	HUMPHREYS	28053	0.20
MS	ISSAQUENA	28055	0.20
MS	ITAWAMBA	28057	0.30
MS	JACKSON	28059	0.30
MS	JASPER	28061	0.10
MS	JEFFERSON	28063	0.00
MS	JEFFERSON DAVIS	28065	0.00
MS	JONES	28067	0.40
MS	KEMPER	28069	0.30
MS	LAFAYETTE	28071	0.30
MS	LAMAR	28073	0.40
MS	LAUDERDALE	28075	0.10
MS	LAWRENCE	28077	0.00
MS	LEAKE	28079	0.20
MS	LEE	28081	0.30
MS	LEFLORE	28083	0.10
MS	LINCOLN	28085	0.00
MS	LOWNDES	28087	0.20
MS	MADISON	28089	0.20
MS	MARION	28091	0.40
MS	MARSHALL	28093	0.00
MS	MONROE	28095	0.20
MS	MONTGOMERY	28097	0.20
MS	NESHOBA	28099	0.20
MS	NEWTON	28101	0.10
MS	NOXUBEE	28103	0.30
MS	OKTIBBEHA	28105	0.20
MS	PANOLA	28107	0.30
MS	PEARL RIVER	28109	0.40
MS	PERRY	28111	0.40
MS	PIKE	28113	0.40
MS	PONTOTOC	28115	0.30
MS	PRENTISS	28117	0.30
MS	QUITMAN	28119	0.30
MS	RANKIN	28121	0.10
MS	SCOTT	28123	0.10
MS	SHARKEY	28125	0.20
MS	SIMPSON	28127	0.10
MS	SMITH	28129	0.10
MS	STONE	28131	0.40
MS	SUNFLOWER	28133	0.10
MS	TALLAHATCHIE	28135	0.10
MS	TATE	28137	0.00
MS	TIPPAH	28139	0.30
MS	TISHOMINGO	28141	0.30
MS	TUNICA	28143	0.00
MS	UNION	28145	0.30
MS	WALTHALL	28147	0.40
MS	WARREN	28149	0.00
MS	WASHINGTON	28151	0.10
MS	WAYNE	28153	0.40
MS	WEBSTER	28155	0.20
MS	WILKINSON	28157	0.40
MS	WINSTON	28159	0.20
MS	YALOBUSHA	28161	0.10
MS	YAZOO	28163	0.20
MO	BARRY	29009	0.20
MO	BARTON	29011	0.20
MO	BOLLINGER	29017	0.20
MO	BUTLER	29023	0.20
MO	CAPE GIRARDEAU	29031	0.20
MO	CARTER	29035	0.20
MO	CEDAR	29039	0.20
MO	CHRISTIAN	29043	0.20
MO	CRAWFORD	29055	0.40
MO	DADE	29057	0.20
MO	DALLAS	29059	0.20

State	County/Parish	FIPS	Class I price adjustment
MO	DENT	29065	0.40
MO	DOUGLAS	29067	0.20
MO	DUNKLIN	29069	0.50
MO	GREENE	29077	0.20
MO	HOWELL	29091	0.20
MO	IRON	29093	0.40
MO	JASPER	29097	0.20
MO	LACLEDE	29105	0.20
MO	LAWRENCE	29109	0.20
MO	MC DONALD	29119	0.20
MO	MADISON	29123	0.20
MO	MISSISSIPPI	29133	0.50
MO	NEW MADRID	29143	0.50
MO	NEWTON	29145	0.20
MO	OREGON	29149	0.20
MO	OZARK	29153	0.20
MO	PEMISCOT	29155	0.50
MO	PERRY	29157	0.20
MO	POLK	29167	0.20
MO	REYNOLDS	29179	0.20
MO	RIPLEY	29181	0.20
MO	SAINT FRANCOIS	29187	0.40
MO	SCOTT	29201	0.20
MO	SHANNON	29203	0.20
MO	STODDARD	29207	0.20
MO	STONE	29209	0.20
MO	TANEY	29213	0.20
MO	TEXAS	29215	0.20
MO	VERNON	29217	0.20
MO	WASHINGTON	29221	0.40
MO	WAYNE	29223	0.20
MO	WEBSTER	29225	0.20
MO	WRIGHT	29229	0.20
TN	BEDFORD	47003	0.30
TN	BENTON	47005	0.30
TN	BLEDSOE	47007	0.60
TN	CANNON	47015	0.30
TN	CARROLL	47017	0.10
TN	CHEATHAM	47021	0.30
TN	CHESTER	47023	0.10
TN	CLAY	47027	0.30
TN	COFFEE	47031	0.60
TN	CROCKETT	47033	0.30
TN	DAVIDSON	47037	0.30
TN	DECATUR	47039	0.30
TN	DE KALB	47041	0.30
TN	DICKSON	47043	0.30
TN	DYER	47045	0.10
TN	FAYETTE	47047	0.10
TN	FENTRESS	47049	0.30
TN	FRANKLIN	47051	0.40
TN	GIBSON	47053	0.10
TN	GILES	47055	0.40
TN	GRUNDY	47061	0.60
TN	HARDEMAN	47069	0.10
TN	HARDIN	47071	0.10
TN	HAYWOOD	47075	0.30
TN	HENDERSON	47077	0.30
TN	HENRY	47079	0.10
TN	HICKMAN	47081	0.30
TN	HOUSTON	47083	0.30
TN	HUMPHREYS	47085	0.30
TN	JACKSON	47087	0.30
TN	LAKE	47095	0.10
TN	LAUDERDALE	47097	0.30
TN	LAWRENCE	47099	0.40
TN	LEWIS	47101	0.30
TN	LINCOLN	47103	0.40
TN	MC NAIRY	47109	0.10
TN	MACON	47111	0.30
TN	MADISON	47113	0.30
TN	MARSHALL	47117	0.30
TN	MAURY	47119	0.30

State	County/Parish	FIPS	Class I price adjustment
TN	MONTGOMERY	47125	0.30
TN	MOORE	47127	0.40
TN	OBION	47131	0.10
TN	OVERTON	47133	0.30
TN	PERRY	47135	0.30
TN	PICKETT	47137	0.30
TN	PUTNAM	47141	0.30
TN	ROBERTSON	47147	0.30
TN	RUTHERFORD	47149	0.30
TN	SHELBY	47157	0.10
TN	SMITH	47159	0.30
TN	STEWART	47161	0.30
TN	SUMNER	47165	0.30
TN	TIPTON	47167	0.10
TN	TROUSDALE	47169	0.30
TN	VAN BUREN	47175	0.60
TN	WARREN	47177	0.60
TN	WAYNE	47181	0.40
TN	WEAKLEY	47183	0.10
TN	WHITE	47185	0.30
TN	WILLIAMSON	47187	0.30
TN	WILSON	47189	0.30

9. Amend § 1007.13 by revising paragraphs (d) (1) through (4) to read as follows:

§ 1007.13 Producer Milk.

* * * * *

(d) * * *

(1) In any month of January through June, not less than 1 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 1 days' production of the producer whose milk diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

* * * * *

10. Amend § 1007.81 by revising paragraph (a) to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.30 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–February period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–February period. In the event that during any month of the June–February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

* * * * *

11. Amend § 1007.82 by revising paragraphs (a)(1), (b), (c)(1), removing paragraph (c)(2)(i), revising paragraphs (d)(2)(iii), (d)(3)(v), and redesignating paragraphs (c)(2)(ii), (c)(2)(iii), (c)(2)(iv) as (c)(2)(i), (c)(2)(ii) and (c)(2)(iii), and revising newly redesignated paragraphs (c)(2)(i) and (c)(2)(iii) to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

(a) * * *

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of January, February and July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

* * * * *

(b) The market administrator may extend the period during which transportation credits are in effect (i.e.,

the transportation credit period) to the month of June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Deputy Administrator of Dairy Programs and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) * * *

(1) Bulk milk received at a pool distributing plant from a plant regulated under another Federal order, except Federal Order 1005; and

* * * * *

(2) * * *

(i) The dairy farmer was not a ''producer'' under this order for more than 45 days during the immediately preceding months of March through May, or not more than 50 percent of the production of the dairy farmer during those 3 months, in aggregate, was received as producer milk under this order during those 3 months; and

* * * * *

(iii) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(i) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

(d) * * *

(2) * * *

(iii) Subtract the applicable Class I price specified in § 1000.50(a) for the county in which the shipping plant is located from the Class I price applicable for the county in which the receiving plant is located;

(3) * * *

(v) Subtract the Class I price specified in § 1000.50(a) applicable for the county in which the origination point is located from the Class I price applicable at the receiving pool plant's location;

* * * * *

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

Appendix—Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof, as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of § _____ to _____ [1] all inclusive, of the order regulating the handling of milk in the _____ [2] marketing area (7 CFR Part _____ [3]) which is annexed hereto; and

II. The following provisions:

§ _____ [4] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ [5], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Department in accordance with Sec. 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest _____

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Part III

Department of Health and Human Services

42 CFR Parts 5 and 51c

Designation of Medically Underserved Populations and Health Professional Shortage Areas; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5 and 51c

RIN 0906–AA44

Designation of Medically Underserved Populations and Health Professional Shortage Areas

AGENCY: Department of Health and Human Services (DHHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise and consolidate the criteria and processes for designating medically underserved populations (MUPs) and health professional shortage areas (HPSAs), designations that are used in a wide variety of Federal government programs. These revisions are intended to improve the way underserved areas and populations are designated, by incorporating up-to-date measures of health status and access barriers, eliminating inconsistencies and duplication of effort between the two existing processes. These revisions are intended to reduce the effort and data burden on States and communities by simplifying and automating the designation process as much as possible while maximizing the use of technology. No changes are proposed at this time with respect to the criteria for designating dental and mental health HPSAs. Podiatric, vision care, pharmacy, and veterinary care HPSAs, which are no longer in use, would be abolished under the rules proposed below.

Additional background information will be available for review on the web site of the Health Resources and Services Administration: *http://bhpr.hrsa.gov/shortage.* The methodology is also described in a journal article recently published in the *Journal of Health Care for the Poor and Underserved* entitled ''Designating Places and Populations as Medically Underserved: A Proposal for a New Approach'' (Ricketts et al, 2007).

DATES: Comments on this proposed rule are invited. In particular, comments are invited regarding the indicators of need and the weighted values of the health care practitioners used in the methodology. To be considered, comments must be submitted on or before April 29, 2008.

ADDRESSES: You may submit comments in one of four ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Click on the link ''Submit electronic comments on HRSA regulations with an open comment period.'' (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Health Resources and Service Administration, Department of Health and Human Services, Attention: Ms. Andy Jordan, 8C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one original and two copies) to the following address only: Health Resources and Service Administration, Department of Health and Human Services, Attention: Ms. Andy Jordan, 8C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Rockville address, please call telephone number (301) 594–0816 in advance to schedule your arrival with one of our staff members: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 8C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the HRSA drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.).

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

FOR FURTHER INFORMATION CONTACT: Andy Jordan, 301–594–0197.

SUPPLEMENTARY INFORMATION: The Secretary of Health and Human Services proposes below a consolidated, revised process for designation of Medically Underserved Populations (MUPs) pursuant to section 330(b)(3) of the Public Health Service Act (as amended by the Health Centers Consolidation Act of 1996, Public Law 104–299), 42 U.S.C. 254b, and for designation of Health Professional Shortage Areas (HPSAs) pursuant to section 332 of the Act (as amended by the Health Care Safety Net Amendments of 2002, Pub. L.107–251), 42 U.S.C. 254e. Currently, regulations at 42 CFR Part 5 govern the procedures and criteria for designation of HPSAs, while designation of MUPs has been carried out under the Grants for Community Health Services regulations at 42 CFR Part 51c.102(e), and implementing **Federal Register** notices.

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I. Background

An earlier version of proposed rules for a consolidated, revised MUP/HPSA designation methodology and implementation process was published on September 1, 1998 [63 FR 46538–55]. Those proposed rules generated nearly 800 public comments, principally concerning the perceived high impact in terms the safety-net programs which would have lost their existing designations if the rule were finalized. Comments were also received on several other important issues related to the methodology, types of primary care clinicians included, and data collection burden. On June 3, 1999, a **Federal Register** document was published [64 FR 29831] which extended the comment period based on the large volume of comments received and the level of concern expressed. In light of the volume of comments, it was determined that the impact of the proposal as published would be more carefully tested, possible revisions and alternative approaches developed as necessary, and a new notice of proposed rulemaking (NPRM) would be published.

A. Explanation of Provisions

This proposed rule describes a revised methodology which combines indicators of diminished access to health care services, shortages of health professionals, and reduced health status. Developed by a research team at the University of North Carolina's Cecil G. Sheps Center in consultation with staff from the Health Resources and Services Administration (HRSA) and a group of State partners in the designation process, this approach was also tested with a comprehensive impact analysis (see section VI).

This proposed rule will replace the existing Part 5 with regulations governing both MUP and HPSA designations, and will make conforming changes to Part 51c. Together, these changes meet the legislative requirements for both MUP designation and HPSA designation, while consolidating the two processes to the greatest extent possible given the differences in the two authorities. This combined metric, which we propose to call ''the Index of Primary Care Underservice,'' will replace the existing MUP and HPSA criteria and procedures, while maintaining the two separate designations in order to meet the legislative requirements of the relevant statutes. Note that the abbreviation MUP used here includes not only population group designations but also the populations of designated geographic areas, also known as medically underserved areas or MUAs. Similarly, the abbreviation HPSA includes not only geographic area designations, but also population group and facility designations.

Pursuant to Section 302(b) of the Health Care Safety Net Amendments of 2002, a copy of this NPRM will be submitted to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Health, Education, Labor and Pensions of the Senate upon or before the date of its publication, in fulfillment of the statutory requirement for a report to those committees describing any regulation that revises the definition of a health professional shortage area. HRSA has also asked a panel of outside experts to review the proposed methodology and provide an assessment of its appropriateness, validity, and general approach.

These regulations will not be finalized until the public comment period referenced above is over, and any comments received during that time from the public, the panel of outside experts, and from the referenced House and Senate Committees have been taken into consideration. Moreover, this rule will not be finalized until 180 days after delivery of the report to the Congressional committees identified above, in accordance with statute.

B. Current Uses of Designations

The MUP and HPSA designations are currently used in a number of Departmental programs. The major use of MUP designations is as a basis for eligibility for grant funding of health centers under sections 330(c) and (e) of the Act, which require that these health centers serve medically underserved populations. The major use of HPSA designations is by the National Health Service Corps (NHSC); health professionals placed through the NHSC can be assigned only to designated HPSAs.

Other health centers not funded by section 330 grants but otherwise meeting the definition of a health center in section 330(a)—including those which provide services to a MUP—may be certified by the Centers for Medicare and Medicaid Services (CMS) upon recommendation by HRSA as federally qualified health center (FQHC) look-alikes. FQHC look-alikes, like all health centers funded under Section 330, are eligible for special Medicare and Medicaid reimbursement methods.

Clinics in rural areas designated either as an MUA or as a geographic or population group HPSA, and whose staff include nurse practitioners and/or physician assistants, may be certified by CMS as Rural Health Clinics (RHCs). These RHCs are also eligible for special methods for determining Medicaid and Medicare reimbursement.

Physicians delivering services in an area designated as a geographic HPSA are eligible for the Medicare Incentive Payments (MIP) of an additional 10 percent above the Medicare reimbursement they would otherwise receive. The Medicare Modernization Act of 2003 included beneficial changes to this incentive program. Payments to providers are now automated based on the zip codes of the providers, and the information on eligibility is now available on the CMS Web site. The MIP, also known as the HPSA Bonus Payment, is distinct from the Physician Scarcity Area Program, which does not use HRSA designations in determining eligibility.

Interested Federal Government Agencies and State Health Departments can also recommend waiver of the return-home requirements for an International Medical Graduate physician who came to the United States on a J–1 visa, in return for three years of service by that physician in a particular HPSA or MUA.

In addition, a number of health professions programs funded under Title VII of the Public Health Service Act give preference to applicants with a high rate of training health professionals in medically underserved communities and/or for placing graduates in medically underserved communities, defined (in Section 799B of the Act) to include both HPSAs and MUPs.

For most of the programs that use these designations, designation of the area or population to be served is a necessary but not sufficient condition for allocation of program resources, in that other eligibility requirements must also be met and/or there is competition

among eligible applicants for available resources.

II. Revising the Methodology and Designation Mechanisms

A. Relevant Statutes

Authorizing Statutes

The current HPSA criteria date back to 1978, when they were issued under Section 332 of the Public Heath Service (PHS) Act, as amended in 1976; their predecessor, the ''Critical Health Manpower Shortage Area'' or CHMSA criteria, dates back to the 1971 legislation creating the NHSC. Section 332(b) of the Public Health Service Act states that the Secretary shall take into consideration the following when establishing criteria for the designation of areas, groups, or facilities as HPSAs: (1) The ratio of available health manpower to the number of individuals in an area or population group, and (2) Indicators of a need for health services, notwithstanding the supply of health manpower.

The current MUA/P criteria date back to 1975, when they were issued to implement legislation enacted in 1973 and 1974 creating grants for Health Maintenance Organizations (HMOs) and Community Health Centers (CHCs), respectively. Section 330(b)(3) of the Public Health Service Act defines ''medically underserved population'' as the population of an urban or rural area designated by the Secretary of Health and Human Services as an area with a shortage of personal health services, or a population group designated by the Secretary as having a shortage of such services. No specific criteria were included in the statute.

Health Care Safety Net Amendments of 2002

The Health Care Safety Net Amendments of 2002, Public Law 107–251, as amended by Public Law 108–163, included modification of Section 332 to require the ''automatic'' designation as HPSAs of all FQHCs and RHCs meeting the requirements of Section 334 (concerning the provision of services without regard to ability-to-pay) for at least six years. After six years, such entities must demonstrate that they meet the designation criteria for HPSAs, as then in force.

This legislative provision appears to have had two major goals:

1. To avoid requiring FQHCs or RHCs from going through two separate designation processes. Given that most FQHCs must demonstrate service to an MUP in order to be funded (or to be certified as an FQHC look-alike), it was deemed unnecessary to also require these entities to obtain a HPSA designation in order to apply for placement of NHSC clinicians. Similarly, every RHC must obtain one of several types of designation in order to achieve RHC status (either a HPSA, MUA, or Governor Designated and Secretary Certified Shortage Area designation); arguably, those for whom this was not a HPSA designation should not be required to obtain a second type of designation to apply for NHSC. (It is worth noting that this goal will be met once the regulations herein are in force, since areas and population groups designated or updated under the criteria herein would be both HPSAs and MUPs, eligible for the FQHC, RHC and NHSC programs).

2. To allow a long transition period for phasing in the new designation criteria as they might affect existing projects. Existing FQHCs and RHCs will have plenty of time to show that the areas where they are located, the populations they serve, or the facilities involved in fact meet the new criteria, so that their services will not be disrupted due to the criteria change.

Although an extensive impact analysis of the proposed new criteria has been conducted to demonstrate that such disruption is unlikely in all but a few cases, this legislatively required smooth transition should ease concerns about the changes and allow plenty of time to adapt to the new designation criteria.

B. Purpose of Revising the Methodology and Designation Process

As previously stated, the current HPSA and MUA/P criteria date back to the 1970s. The original CHMSA criteria required that a simple population-to-primary care physician ratio threshold be exceeded to demonstrate shortage. The HPSA criteria went further and allowed a lower threshold ratio for areas with high needs as indicated by high poverty, infant mortality or fertility rates, and for population groups with access barriers. The original MUA/P criteria, still in effect, employ a four-variable Index of Medical Underservice, including percent of the population with incomes below poverty, population-to-primary care physician ratio, infant mortality rate and percent elderly.

Since the time these designation criteria were first developed, there has been an evolution both in the types of requests for designation received and the application of the HPSA criteria. Instead of relatively simple geographic area requests, such as whole counties and rural subcounty areas, more requests have been made for urban neighborhood and population group designations. The availability of census data on poverty, race, and ethnicity at the census tract level has enabled the delineation of urban service areas based on their economic and race/ethnicity characteristics. Areas with concentrations of poor, minority and/or linguistically isolated populations have achieved area or population group HPSA designations based on their limited access to physicians serving other parts of their metropolitan areas. As a result, the differences between HPSA and MUA/P designations have become less distinct.

The methodology for identifying underserved areas, as well as the process by which interested State and community parties can obtain designation as underserved areas, are being revised to accomplish several goals and alleviate problems associated with the existing methods of designation.

In revising the underlying methodology for identifying underserved areas, our goals were to create a new system that:

(a) Is simple to understand for those who seek designation;

(b) is intuitive and has face validity;

(c) incorporates better measures or correlates of health status and access;

(d) is based on scientifically recognized methods and is replicable;

(e) minimize unnecessary disruption; and

(f) constitutes an improvement over current methods in fairly and consistently identifying places and people who are in need of primary health care and who encounter barriers to meeting those needs.

In revising the designation process, our goals were to:

(a) Consolidate the two existing procedures, sets of criteria, and lists of designations;

(b) make the system more proactive and better able to identify new, currently undesignated areas of need and areas no longer in need;

(c) automate the scoring process as much as possible, making maximum use of national data and reducing the effort at State and community levels associated with information gathering for designation and updating;

(d) expand the State role in the designation process, with special attention to the State role in definition of rational service areas;

(e) reduce the need for time-consuming population group designations, by specifically including indicators representing access barriers experienced by these groups in the criteria applied to area data.

These goals are explained more fully below. We believe the proposed methodology and designation process address all of these goals and therefore offers a significant improvement in the identification of communities experiencing limited access to primary care services. In turn, we believe these revisions will assist the Department in targeting key resources more effectively to areas of greater relative need for assistance.

1. Methodological Goals

Simplicity

The new underservice measure must be understandable and usable by those who seek designation. In this vein, we decided the new methodology should continue to use the population-to-provider ratio as the fundamental metric of underservice because such ratios are well-recognized and understood by the program participants and would provide some continuity between a new proposal and the older methods that included the ratios very prominently in the calculations. Discussions with the federal agencies and stakeholder groups during the development of the revised approach also revealed a preference for using that metric as the basis for a revised method.

Face Validity

The new underservice measure must be intuitive and have face validity. For example, factors that reflect progressively worse access should result in proportionately increasing scores.

Incorporate Better Measures or Correlates of Health Status and Access

While both designation statutes speak of the inclusion of health status indicators, the only specific measure of health status historically mentioned in either statute or included in the existing designation criteria is infant mortality rate.

Low birthweight rate is a more robust indicator of health status because there are more events per unit population. Because both infant mortality and low birthweight rate are nationally available for all counties and for a limited number of sub-county areas (generally, for places of population 10,000 or more), these measures were incorporated in the proposed methodology. In addition, a new measure of actual/expected death rate (standardized mortality ratio) is incorporated.

As described in more detail in section IV, this methodology further incorporates other correlates of health status and access, such as ethnic minority status and unemployment, based on ready national availability of data and the health inequalities literature.

Science-Based

The new underservice measure must be based on scientifically recognized methods and be replicable. For example, the current Index of Medical Underservice comprises four variables, each of which contributes approximately a quarter to the maximum score. In other words, each of the four variables are weighted equally. However, there is no empirical justification for why the income variable should have a weight equal to the infant mortality rate variable. Rather, in designing the new methodology, we believed the contribution of each variable to an overall measure should be based on some verifiable statistical relationship. As discussed further in section IV, the new methodology used an overall conceptual framework to describe access and used analytical techniques such as regression and factor analysis to arrive at the weighting/scoring system proposed herein.

Minimize Unnecessary Disruption

Partly due to the Health Care Safety net Amendments of 2002, as described earlier, we have attempted to achieve a reasonable transition to this new methodology for underserved areas. Though the revised designation method will not (and should not) generate the exact same designations as the previous method, we have attempted to minimize unnecessary disruption where applicable. The new measure will allow us to better focus the designations to more needy areas and populations.

Acceptable Performance

The new system must perform better than the current designation criteria using updated data, and it should be seen as an improvement by the multiple key stakeholder groups who rely on these designations. We used many different evaluating criteria for this guiding principle, but the fundamental criterion we used is whether the method fairly and consistently identifies places and people who were in need of primary health care and who had barriers to meeting those needs.

2. Designation Process Goals

Consolidation and Simplification

The separate statutes authorizing MUP and HPSA designations address the same fundamental policy concern: That is, the identification of those areas and populations with unmet health care needs for the purpose of determining eligibility for certain Federal health care resources. The existence of two similar but quite distinct procedures and sets of criteria has been confusing to many and has often led to contradictory or inconsistent results.

The legislative requirements for the two designations are similar in many respects, but the designation processes have, until now, been largely separate. A major reason for the disparity in the designation process is that regular updating of HPSAs is required by statute, though such updating is not statutorily required for the MUA/Ps and has not regularly been done.

The rules proposed below attempt to establish uniform procedures and criteria, not only to simplify the designation process for the agencies, communities, entities, and individuals involved, but also to increase the efficient and effective use of Departmental resources. To do so, all the legislatively mandated elements of both statutes are included in the proposed procedures. The revised criteria for geographic HPSAs and MUAs are identical, as are those for most types of MUPs and corresponding population group HPSAs, wherever permitted by statutory requirements. Since facility designations are only authorized for HPSAs, this is one domain for which the two could not be the same.

Proactivity

The proposed methodology can be applied using national data obtained by HRSA and made available to State partners in the designation process, thereby enabling more universal application of the designation criteria. Applicant familiarity with the designation process should also become less of a factor in obtaining designation, and the need for independent data collection by applicants will be less of a barrier and burden.

The national databases include updated versions of the data used in the development of this methodology: Provider data from appropriate professional associations, such as the American Medical Association (AMA) physician data; socio-demographic data from the U.S. Census Bureau or a vendor which produces intercensal estimates; unemployment data from the Department of Labor; and health status data from the National Center for Health Statistics. At the same time, States and communities will continue to have the opportunity to substitute State and local data for the national data if the State and local data are more reliable and/or more current. Data from recognized sources such as State Data Centers, economic forecasting agencies such as J.D. Powers, and similar entities, and

that are used for other state purposes may be submitted. Provider data may be secured from a variety of sources: State licensing boards, state or local professional societies, professional directories, etc. Data sources, methodologies, and dates must be specified.

Automation

The proposed methodology will enable a more automated process for designation, through the use of a tabular method for scoring areas and updating these scores. The new method makes considerable use of census variables for which data are available not only at the county level but also at subcounty levels (e.g., for census tracts and census divisions), so that a wide variety of State- and community-defined service areas can be evaluated for possible designation. Also, an interactive system for processing designation requests and updates will permit State partners in the designation process to work together with the federal designation staff using the same databases. The intent is to minimize the effort required by States, communities, and other entities to designate an area or update its designation.

Increased State Role

The proposed approach seeks to foster an increased partnership between the various levels of government involved in designation, including a significantly larger State and local role in defining service areas, underserved population groups and unusual local conditions. The new criteria are less prescriptive in terms of travel time and mileage standards for defining service areas.

Each State will be encouraged to define, with community input and in collaboration with the Secretary, a complete set of rational service areas (RSA) covering its territory. Once developed, these service areas will be used in underservice/shortage area designations unless and until new census data or health system changes require further area boundary changes. Currently the agency allows States to provide their own provider data through a new interactive system. States with more reliable data can substitute them for national data, which will reduce the time required for case-by-case review.

Reduce the Need for Population Group Designations

Designation of population groups is typically more resource-intensive than designation of geographic areas, both from the standpoint of data collection (since obtaining data for a particular population is often more difficult than for the area as a whole) and in terms of review. As discussed below, specific indicators included in the proposed approach represent the access barriers of poverty/low income, unemployment, racial minority or Hispanic ethnicity, population density and population over 65 years. This approach specifically adjusts an area's base population-to-primary care clinician ratio for the effects of these variables. Therefore, it is hoped that this method will reduce the need for specific population group designations by increasing the probability of designation of geographic areas with concentrations of these groups.

III. Development of Methodology To Achieve Goals

A. 1998 NPRM and Summary of Comments Received

Following consultation with two panels of experts and in-house impact testing, an NPRM to revise the designation methodology was published on September 1, 1998. Those proposed rules (referred to hereinafter as ''NPRM1'') would have created one process for simultaneous designation of MUPs and HPSAs; set forth revised criteria for designation of MUPs using a new Index of Primary Care Services (IPCS); and defined HPSAs as a subset of the MUPs, consisting of those MUPs with a population-to-practitioner ratio exceeding a certain level. The use of RSAs would have been required for application of both the MUP and HPSA criteria.

The IPCS score would have been calculated based on a weighted combination of seven variables: Population-to-primary care clinician ratio, percent population below 200% poverty, percent population racial minorities, percent population Hispanic, percent population linguistically isolated, infant mortality rate or percent low birthweight births, and low population density. The maximum possible IPCS score would have been 100, and RSAs whose IPCS score equaled or exceeded 35 would qualify for MUP designation.

In counts of primary care clinicians, nurse practitioners (NP), physician assistants (PA), and certified nurse midwives (CNM) would have been included with a weight of 0.5 full time equivalents (FTE) relative to primary care physicians. There would have been two tiers of designations, with the first tier consisting of those areas which meet the criteria when all primary care clinicians practicing in the area are counted, and the second tier consisting of those additional areas which meet the criteria when certain categories of practitioners (NHSC assignees and those practicing in CHCs) are excluded from clinician counts.

HPSA designation would have required a minimum population-to-primary care physician ratio of 3,000:1, but this threshold could only be applied to those RSAs found to have an IPCS score which exceeded the MUP designation threshold of 35.

The period for public comment on the 1998 proposed rule was extended to January 4, 1999. Over 800 comments were received, analyzed, and categorized. Major issues raised are summarized briefly below:

1. Impact in Terms of Designations Lost—Many commenters estimated that unacceptably high numbers of HPSA designations would be lost in their State if the proposed methodology were adopted, particularly in rural and frontier areas, as well as significant numbers of MUPs. They believed that the impact stated in NPRM1's preamble, in terms of percentages of designations lost, was substantially underestimated.

2. Inclusion of nonphysician primary care providers—A number of commenters objected to the inclusion of NPs/PAs/CNMs in primary care clinician counts, based on the additional burden on applicants of counting them, and cited the lack of adequate State or national databases for these clinicians. Others questioned the reasonableness of weighting them at 0.5 FTE relative to a primary care physician. Typically, responding NPs, PAs, CNMs, professional organizations representing them, and certain other health care advocates felt the 0.5 should be adjusted upward; others felt it should be adjusted downward, particularly in States where the scope of practice of these clinicians is limited. There were also concerns that NPs, PAs and CNMs who were not in clinical, primary care practice would be inadvertently counted if available data were used, and that truly underserved areas would lose designation as a result.

3. Threshold for HPSA Designation—The proposed 3,000:1 population-to-primary care clinician threshold ratio for HPSA designation was considered too high by many commenters, especially if NPs/PAs/CNMs were to be counted as well as primary care physicians.

4. Urban/Rural Balance—Many of the indicators selected for inclusion in the new IPCS (such as race, Hispanic ethnicity, linguistic isolation, and low birthweight births), were viewed as tending to bias the new index toward designation of urban areas (as compared with indicators like percent elderly,

which had been included in the previously-used Index of Medical Underservice and was seen as favoring rural areas).

5. HPSAs required to be a subset of MUPs—the proposed requirement that an area could receive HPSA designation only if it first qualified as an MUP (by having an IPCS score which exceeded the 35 threshold) was seen as threatening many legitimate currently-designated HPSAs (i.e., HPSAs with population-to-practitioner ratios higher than 3000:1 but whose poverty rates and scores on other IPCS variables were not high enough to achieve the IPCS threshold).

6. Two-tiered Designations—The idea of two-tiered designations was generally supported, but an issue arose as to which federally-supported primary care clinicians should be excluded from counts in tier 2. Most agreed that NHSC assignees and physicians in CHCs should be excluded (as the proposed rule did). Many felt that those physicians on J–1 waivers should also be excluded from tier 2 counts, and some suggested that primary clinicians in other safety-net settings (such as RHCs or State-funded health centers) should also be excluded.

On June 3, 1999, notice was given in the **Federal Register** that further analysis would be conducted, to include a thorough, updated analysis of the impact of the proposed approach as published, as well as the testing of alternatives based on analysis of the comments received. The Notice indicated that these impact analyses would be applied to the most current obtainable national data for all counties and currently-defined subcounty MUPs and HPSAs, and that one or more outside organizations would verify the impact testing. A new NPRM would then be published for public comment.

B. Development of Method Proposed in This NPRM

During the remainder of 1999, HRSA acquired components of the national databases necessary for impact testing, such as practice addresses for primary care physicians, PAs, NPs, and CNMs. An extensive data cleaning and provider site geocoding process ensued. Simultaneously, HRSA began working with researchers at HRSA-funded Rural Health Research Centers and Health Professions Workforce Centers to develop specifics of the plan for further analysis and testing. Ultimately, the Cecil G. Sheps Center of the University of North Carolina (UNC) was funded to undertake national testing of the previously-proposed methodology in NPRM1 and alternative methodologies, and to coordinate efforts by other research groups who would do State or regional testing.

In January 2000, a group of sixteen State Primary Care Office (PCO) representatives volunteered to assist by providing recommendations for a revised approach to designation from their standpoint, as the ones primarily responsible for providing data to HRSA in support of designation requests and updates for their States. This led to a series of conference calls, a two-day meeting, and eventual preparation of draft recommendations for consideration by the appropriate federal officials. Meanwhile, researchers at the Sheps Center were considering alternative methodologies for simultaneous consideration of various indicators of shortage and underservice. The two groups met on several occasions to coordinate efforts; the methodology finally developed by Sheps researchers and used as the basis for these proposed rules was consistent with the recommendations of the group of PCOs.

Over time, the following specific steps took place:

(a) A comprehensive database for impact testing was established. This entailed: ''cleaning'' and geocoding the various physician databases acquired (from professional associations and from federal and State agencies approving J–1 visa waivers), and matching them with each other and with HRSA's NHSC database; similar activity for data acquired on non-physician primary care clinicians (NP/PA/CNM); adding geocoded location data for HHS-sponsored safety-net provider sites, including CHCs, NHSC sites and RHCs; and the inclusion of appropriate Census data (or vendor-supplied intercensal estimates for Census variables) as well as data on other health status and access-related variables.

(b) The group of sixteen PCOs developed their recommended approach to a new designation methodology and provided their recommendations to HRSA staff. Their original recommendation was essentially to expand the number of high need indicators which could be used to adjust the population-to-practitioner ratio threshold for designation, to allow several different threshold levels depending on the number of high need indicators present, and then to compare the area's actual ratio with the adjusted threshold appropriate for that area.

(c) HRSA staff worked with the UNC–Sheps Center team to develop a conceptual framework and a methodology responsive to concerns raised in public comments and in the PCO recommendations. In response to the criticism of the earlier 1998 proposal as using appropriate indicators but an arbitrary weighting scheme, this methodology was developed based on a general conceptual framework of access and underservice and statistical methods. The overall goal was to identify areas and communities in need of services to increase access, relative to other communities across the country.

The conceptual framework and methodology will be described further in sections IV.A and IV.B. A more technical description is also provided in Appendix B. The way the method is applied to determine designation status is described in Sections IV.C and V. below. Finally, further details are available on HRSA's Web site (*http://bhpr.hrsa.gov/shortage*) and in a journal article recently published in the *Journal of Health Care for the Poor and Underserved* entitled ''Designating Places and Populations as Medically Underserved: A Proposal for a New Approach'' (Ricketts et al., 2007).

(d) The impact of the proposed method on the number and population of geographic and low income designations at national and state levels was explored and compared with alternatives using updated national data allied to: (a) The criteria currently in place; (b) the criteria proposed in the September 1, 1998 rule, and (c) the new methodology proposed in this rule. In addition, impact analyses with State data were performed by Regional Centers for Health Workforce Studies and/or PCOs in four States. This analysis, discussed in detail in Section VI below, indicated that this proposed method would not have severe adverse effects on most safety net providers, and would—at the transition from the old method to the new—maintain a similar total underserved population.

(e) However, there remained concerns that some safety net facilities—despite serving populations clearly underserved, such as the uninsured—might be located in areas that did not meet geographic or population group criteria. Consequently, with the help of the group of 16 PCOs, a separate method was developed (hereafter referred to as the ''facility designation method'') for facility designation of those safety-net facilities which could demonstrate high levels of service to the uninsured and/or Medicaid-eligibles. This was tested using the Uniform Data System for community health centers and found to support designation of most Section 330-funded health centers.

(f) The new methodology's concepts and impact analysis approaches have been discussed in a preliminary fashion

at various meetings of national and State organizations whose members are affected by shortage/underservice designations.

IV. Description of Conceptual Framework and Methodology and Alternatives Considered

A. Conceptual Framework

In our model, as in health services research more widely, we consider utilization of services an outcome of the demand and supply forces within the healthcare system. The conceptual framework for the model is based on the idea that barriers to care reduce appropriate use, which is reflected in delayed and therefore higher subsequent use rates. We call this concept ''thwarted demand.'' For example, individuals with diabetes living in remote, rural areas may put off seeing their doctors regularly-not because they do not recognize the need for regular treatment-but because of the distances involved or other potential barriers. These barriers initially reduce utilization. When these individuals eventually do seek treatment, it is often because their condition worsened to the point where they could no longer defer treatment. As the severity of their condition worsens and their need for care increases, so too does their utilization of services, in terms of treatment volume and/or intensity. They may require hospitalization, for instance, or present at an emergency room.

To estimate the dimensions of both the (a) delayed—and thus initially reduced utilization rate—as well as the (b) subsequent higher use rates, we created a methodology that centers around the level of care experienced by a ''well-served population'' in order to establish an initial standard against which an ''under-served population'' can be defined. In a ''well-served population,'' where there are no barriers to care, healthcare utilization will be an expression of healthcare demand (i.e., demand is not thwarted). The assumption was made that, for groups without significant barriers to care, primary care utilization rates would cluster around the most appropriate level of care and, in turn, that their demand for care will also reflect their need for care. In an ''under-served population,'' by contrast, demand will be initially thwarted and healthcare utilization will therefore understate true demand.

Moreover, healthcare needs tend to be greater in areas with disadvantaged populations. The health inequalities literature has shown, for example, that conditions like diabetes and cancer are more prevalent among minorities. In turn, we can expect that areas with a high proportion of minorities will—on average—have greater healthcare needs than areas with a lower proportion of minorities. To the extent that healthcare needs tend to be greater in underserved populations, the level of healthcare utilization observed in underserved populations would understate true demand even further. Thus, the model adjusts for this increased need and thwarted demand.

As stated earlier, however, thwarted demand potentially creates a paradox since low access often results in subsequent illness that may require a higher level of health care use, in terms of either treatment volume or intensity. The entry of the patient into a structured care system may also induce subsequently higher rates of use of primary care services incident to hospitalizations or due to raised familiarity with the system. This paradox is likely to affect overall use rates in low-access areas in such a way as to increase use rates.

We accepted that these positive and negative factors would be simultaneously operating and sought ways to estimate their individual effects in terms of both initially reduced and subsequently increased visits. The net, overall need for services can be reflected in a combination of *visits precluded* with *visits induced.*

$$+ \frac{\text{Absolute number of reduced visits caused by access barriers}}{\text{Absolute number of increased visits caused by delayed care or greater morbidity}} \over \text{Total visits that would be demanded if population were barrier free}$$

By adjusting for these bi-directional effects of thwarted demand, this methodology effectively allows us to ask, ''What level of care would these individuals utilize if they were well-served and barrier free?'' This adjusted utilization rate becomes the proxy in our revised model for the ''effective need'' in an underserved population. For example, an underserved area that contains 100 people may nevertheless ''effectively need'' the same level of services an area of 1,000 people needs. In this underserved area, the ''actual'' population may be 100 but the ''effective'' population can be thought of as 1,000.

We then compare this ''effective need'' in an underserved population to the available supply of primary care providers in that area to create a population-to-provider ratio. The underlying logic is that meeting community needs could be expressed in ratios of appropriate use to optimal service productivity. The use rate would be expressed in population counts and the service productivity in practitioner counts. The goal was to reflect the level of a population's need for office-based primary care visits in terms of an adjusted population count that took into consideration characteristics that would affect use of services.

We considered various other proxies for need besides the population-to-provider ratio. We ultimately decided to use an adjusted population-to-provider ratio for several reasons. First, the prominence of population-to-practitioner ratios in the two existing measurements of underservice was recognized. Discussions with the federal agencies and stakeholder groups during the development of the revised approach also revealed a preference for using that metric as the basis for a revised method. Furthermore, practical reasons for the use of this ratio as a starting point for the construction of an index included the fact that such ratios are well-recognized and understood by the program participants and would provide some continuity between a new proposal and the older methods that included the ratios in the calculations.

Such a metric is also sensitive to the two different sources of unmet need—provider shortages and barriers to care—that programs which rely on the HPSA and MUA/P designations attempt to address. In HPSAs, by definition, access is restricted because there are few or no primary care health professionals who will take care of certain patients. The remedy for this is to supplement the professional supply with practitioners who will see all patients, in order to bring the numbers of professionals more into line with a level of supply generally considered adequate. For MUA/Ps, the primary reasons for designation relate to barriers to accessing existing primary care services (e.g., financial) or the combination of higher needs and lower

availability. The central task in combining these two systems was to find a common metric that was sensitive to both of these characteristics of underservice, which the adjusted population-to-provider ratio is.

B. Methodology

The model can be thought of as compromising six basic steps.

Step 1: Calculate the numerator for the population-to-provider ratio: The ''effective barrier free population.''

The first step is to estimate the effects that differences in the structure of the population would have on service utilization based on age and gender by assigning weights according to the national use rates for people without barriers to care. Accordingly, we call this the ''effective barrier free population'' because it allows us to estimate what the utilization rate would be, after adjusting for age and gender, if the population of a community were able to use primary care services at the same rate as a population with no constraints due to factors like poverty, race, or ethnicity. This step is necessary because research shows that age and gender affect utilization rates independent of barriers to care. The elderly, for example, use services at higher rates than the non-elderly even when barriers to care are controlled for.

To calculate the ''effective barrier free population,'' we adjust the area's base population to reflect differential requirements by age and gender for primary care services, using utilization rates for populations who are effectively ''barrier-free.'' This adjustment uses the latest available Medical Expenditure Panel Survey (MEPS) utilization data to determine what the expected number of primary care office visits for the area's population would be (based on its age/gender make-up) if usage were at the national average for persons who are non-minority, not poor, and employed. This total expected number of primary care visits is then divided by the corresponding current national mean number of primary care visits per person to obtain the ''effective barrier free population.'' The effect of this adjustment is that a community with more older people or more women of child-bearing age than the average national age-gender distribution will appear to be a larger population than if the age-gender mix were like the nation's as a whole.

The utilization rates used in developing and testing the methodology proposed herein are shown in Table IV–1. These will be updated when this regulation is finalized and periodically thereafter by notice in the **Federal Register** that updated data will be posted on the HRSA Web site.

TABLE IV–1.—BARRIER FREE POPULATION USE RATE, ADJUSTED FOR AGE AND GENDER, EXPRESSED AS PRIMARY CARE VISITS PER PERSON PER YEAR

Age	Average primary care visits (per year) by age group category					
	0–4	5–17	18–44	45–64	65–74	75+
Male	5.164	2.499	2.867	4.410	6.052	8.056
Standard Error	*.488*	*.401*	*.372*	*.386*	*.469*	*.533*
Female	4.046	2.256	5.007	5.480	6.710	8.160
Standard Error	*.491*	*.403*	*.373*	*.389*	*.456*	*.533**

*The above table is from MEPS, 1996. These data are applied to the actual area age-gender total to derive the barrier free total utilization for a population with these age and gender characteristics. The corresponding national mean utilization rate is 3.471. *Imputed.*

The calculations for Wichita County, Kansas are shown as an illustration of how this step of the model works. The chart below provides the population breakout by age and gender, the visit rates for each category, and the adjusted population that results from dividing by the average visit rate. The steps are detailed below the chart.

The basic formula is:

Barrier-free use rate = 4.046 * (# of females aged 0–4) + 2.256 * (# of females aged 5–17) +5.007* (# of females aged 18–44) + 5.480 * (# of females aged 45–64) + 6.710 * (# of females aged 65–74) + 8.160 * (# of females aged 75+) + 5.164 * (# of males aged 0–4) + 2.499 * (# of males aged 5–17) + 2.867 * (# of males aged 18–44) + 4.410 * (# of males aged 45–64) + 6.052 * (# of males aged 65–74) + 8.056 * (# of males aged 75+)

TABLE IV–1A.—APPLYING TABLE IV–1 USING WICHITA, KANSAS AS AN EXAMPLE

	Ages 0–4	5–17	18–44	45–64	65–74	75 and over
Females:	.....	.....	.....	.....	.....	.....
Population	65	207	363	281	106	113
Multiplier (from Table IV–1)	4.046	2.256	5.007	5.48	6.71	8.16
Visits	262.99	466.992	1817.541	1539.88	711.26	922.08
Males:	.....	.....	.....	.....	.....	.....
Population	93	234	386	108	321	94
Multiplier (from Table IV–1)	5.164	2.499	2.867	4.41	6.052	8.056
Visits	480.252	584.766	1106.662	476.28	1942.692	757.264
Female visits	5720.743					
Male visits	5347.916					
Total visits	11068.659					

For Wichita, the calculations are:

Barrier-free use rate

= 4.046 * (65) + 2.256 * (207) + 5.007 * (363) + 5.480 * (281) + 6.710 * (1060) + 8.160 * (113) + 5.164 * (93) + 2.499 * (234) + 2.867 * (386) + 4.410 * (108) + 6.052 * (321) + 8.056 * (94)

= 262.99 + 466.992 + 1817.541 + 1539.88 + 711.26 + 922.08 + 480.252 + 584.766 + 1106.662 + 476.28 +1942.692 + 757.264

= 11068.659 visits.

Using 1996 MEPS data, individuals who were barrier free had, on average, 3.741 visits to their primary care providers. If we then divide the barrier-free use rate by this average number of visits, we can obtain the ''effective barrier-free population'' estimate. In Wichita, the calculation would be: Effective barrier-free population = 11068.659 ÷ 3.741 = 2958.74338.

This ''effective barrier-free population'' becomes the numerator—the ''population'' value—in the population-to-provider ratio. For example, the actual population of Wichita, Kansas was 2,436. By going through these calculations, however, we see in Table IV–2 that the effective barrier-free population is 2,959.

TABLE IV–2

County name	A	B
	Total pop 1999	Effective barrier-free population
Wichita, KS	2,436	2959

Step 2: Calculate the denominator in the population-to-provider ratio: The supply of primary care providers.

The second step is to calculate the actual number of FTE primary care clinicians in the target area, including primary care physicians (allopathic and osteopathic), NPs, PAs, and CNMs in primary care settings.

Each active physician in the primary care specialties (i.e., General Practice, Family Practice, General Internal Medicine, General Pediatrics, Ob/Gyn) is included as 1.0 FTE unless there is evidence of less than full-time practice, in which case their actual FTE in the area is used based on guidance set by the Secretary on the calculation of FTEs. As before, physicians in residency training in these specialties are counted as 0.1 FTE.

In this proposed rule, NP/PA/CNMs are also included, but they are counted either as 0.5 FTE or, at the applicant's option, 0.8 times a State-specific practice scope factor running from 0.5 to 1.0 (in recognition that not all NP/PA/CNM practices operate at the same level due to state policies). We discuss this issue in further detail in section V.G below.

Data sources are: American Medical Association Masterfile-Dec. 1998, American Osteopathic Association-May 1999, American College of Nurse Midwives-1999, American Association of Nurse Practitioners-1999, and American Association of Physician Assistants-July 1999.

For example, there are 2.5 FTE primary care providers in Wichita, Kansas, according to our national data.

Step 3: Calculate the base population-to-provider ratio.

The population-to-provider ratio is then calculated using the ''effective barrier-free population'' (from step 1) as the numerator and the number of FTE primary care clinicians (from step 2) as the denominator. Using Wichita, Kansas as an example, the base population-to-provider ratio is 1,183 (table IV–3, column E).

TABLE IV–3

County name	A	B	C	D	E
	Total pop	Effective barrier-free population	Tot FTE primary care	Actual population to FTE ratio (A÷C)	Effective barrier-free pop/FTE ratio (B÷C)
Wichita, KS	2436	2959	2.5	974	1183

Step 4: Adjust for increases in need for primary care services based on community characteristics.

Because the programs that rely on HPSA and MUA/P designations aim to improve access and thereby improve health, this consideration drove the design of the analysis to develop weights for *need for services* in areas and for populations. The fourth step of this methodology thus computes the effects of community factors that have been demonstrated to indicate an even greater need for services but also a lower utilization of services than the average well-insured and healthy population due to barriers to care.

The general approach was to take population-level variables that correlate with barriers to care and then determine the relationship of those variables to the adjusted population-to-practitioner ratio described above, using regression analysis. From this analysis, the relative influence of those variables on the ratio would be derived and, from those parameters, scores could be estimated to adjust or ''weight'' the overall index.

Because step 4 can be quite technical, we present only an overview here. For a more detailed discussion of step 4 and its place in the overall methodology, please refer to Appendix B (please note that what we refer to in this rule as ''step 4'' is referred to as ''steps 4–5'' and ''step 7'' in Appendix B). The methodology is also described in a journal article recently published in the *Journal of Health Care for the Poor and Underserved* entitled ''Designating Places and Populations as Medically Underserved: A Proposal for a New Approach'' (Ricketts *et al.*, 2007).

In developing step 4, we followed the conceptual framework of access proposed by Andersen and colleagues, who posit that there are predisposing and enabling characteristics that can represent need (Andersen *et al.*, 1973; Andersen 1995; Aday and Andersen 1975). There is no consensus set of community-level indicators that reflect need within their framework. Because the programs that rely on HPSA and MUA/P designations largely address unmet need by placing primary care practitioners in areas designated as underserved, we chose to use the effective barrier-free population-to-practitioner ratio (calculated in steps 1,

2, and 3) as a proxy indicator of relevant need for this step in the methodology.

We then ran regression analyses to examine how the ratio varied with socio-demographic indicators that research has shown to correlate with low access and/or poor health status (Mansfield *et al.*, 1999; CDC, 2000; Krieger *et al.*, 2003; Andersen and Newman 1973; Aday and Andersen 1975; Robert 1999; Robert and House, 2000; Kawachi and Berkman, 2003).

We also included factors in the regression model that closely parallel the statutory elements of the current HPSA and MUA designation processes (health status, ability to pay for services and their accessibility), and also directly relate to the programs they initially were designed to support: the NHSC and the CHC Programs.

Three categories of high need indicators were ultimately used, for a total of nine indicators, as described in Table IV–4. These factors were used because they were shown by the regression to have independent effects on access to care as measured by the population-provider ratio.

TABLE IV–4.—VARIABLES USED IN CREATING PROPOSED METHOD

Demographic	Economic	Health status
Percent Non-white ''NONWHITE'', (*src: 1998 Claritas estimates*).	Percent population <200% FPL ''POVERTY'', (*src: 1998 Claritas estimates*).	Actual/expected death rate (adj) ''SMR'', (*src: National Center for Health Statistics, 1998: for previous 5 year period*).
Percent Hispanic ''HISPANIC'', (*src: 1998 Claritas estimates*).	Unemployment rate ''UNEMPLOYMENT'', (*src: Bureau of Labor Statistics, 1998*).	Low birth weight rate ''LBW'', (*src: National Center for Health Statistics, 1998: for previous 5 year period*).
Percent population >65 years ''ELDERLY'', (*src: 1998 Claritas estimates*).	.....	Infant mortality rate ''IMR'', (*src: National Center for Health Statistics, 1998: for previous 5 year period*).
Population density ''DENSITY''* (*src: 1998 Claritas estimates*)		

**Population density is a measure of the market potential for an area as well as an indicator of the rural or urban character of a place. As places become more densely populated, they tend to attract employment and services. Density is also associated with rural and urban settings and the behavioral characteristics of populations vary along that continuum (Amato and Zuo, 1992).*

A number of other need indicators were considered in the development of the methodology. Table IV–5 provides a brief listing and an explanation why they were not chosen. In many cases, these elements are highly correlated with the ones listed above, so their impact on access is already captured by the variables that are included.

TABLE IV–5.—VARIABLES CONSIDERED FOR INCLUSION BUT NOT CHOSEN

Suggested variables	Reason for rejection
Percent low income elderly	Used elderly and low income.
Percent children <6	Used component in adjusted pop.
Percent children low income	Used overall low income.
Percent children <4	Used component in adjusted pop.
Dependency ratio (%>65+%<18/total population)	Used combination of factors that capture this.
Racial disparity in low birth weight rates	Not available for small areas.
Disparity in IMR rates	Small numbers.[1]
Birth rate	Highly correlated with chosen measures.
Teen birth rate	Not available in sub-county areas.
Prenatal care (Kessner)	Unstable in small areas.[1]
Prenatal care index (Kotelchuck)	Unstable in small areas.[1]
Ambulatory care sensitive admissions (ACS rates)	Not available in all states.
Ambulatory care sensitive admissions for children	Not available in all states.
ACS rates restricted to common disease (diabetes, hypertension, cellulitis.	Not available in all states.
ACS rates for Medicare population	Not available in all states.
ACS Rates for common disease for Medicare population	Not available in all states.
Ratio of 100–200% poverty to 100% poverty	High correlation with chosen variables.
Uninsured population	Not available in small areas.
Uninsured <18 years	Not available in small areas.
Population density threshold (LT 6 p sq mile, 7 p sq mile)	Density used as a continuous variable instead.
Linguistic isolation	Not calculated on a regular basis. Imputed data.[2]
Migrant impact	Not available.
Farmworker impact	Not available.
Seasonal worker impact	Not available.
Percent refugees, immigrant	Not calculated on a regular basis. Imputed data.[2]
Medicaid eligible population	Not readily available in small areas.
Tuberculosis incidence	Not available in small areas.
HIV incidence	Not available in small areas.
STD incidence	Not available in small areas.
Cancer incidence	Not available in small areas.
Cervical cancer incidence	Not available in small areas.
Breast cancer incidence	Not available in small areas.
Hypertension rate	Not available in small areas.
COPD rates	Not available in small areas.

TABLE IV–5.—VARIABLES CONSIDERED FOR INCLUSION BUT NOT CHOSEN—Continued

Suggested variables	Reason for rejection
Diabetes rates	Not available in small areas.
Diabetes rates for children	Not available in small areas.
Asthma rates	Not available in small areas.
Asthma rates for children	Not available in small areas.
Smoking rates	Not available in small areas.
Smoking rates for children/adolescents	Not available in small areas.
Obesity	Not available in small areas.
Obesity among children	Not available in small areas.
Alcohol use rates	Not available in small areas.
Alcohol use rates for adolescents.	Not available in small areas.
Binge drinking rates	Not available in small areas.
Disparity measures (ratio of rates for whites and minorities for disease incidence various combinations).	Not available in small areas.
Raw mortality rate	Prefer adjusted mortality rate.[3]
Disparity in mortality rate	Small numbers.
Cancer mortality	Small numbers.
Cardiovascular disease mortality	Small numbers.
Infectious disease mortality	Small numbers.
Suicide rate	Small numbers.
Teen suicide rate	Small numbers.
Percent rural population	Density captures.
Percent urban population	Density captures.
Perceptual measures (other designations)	Varied from state to state.

[1] Infant mortality remains a relatively rare phenomenon and published rates are often compiled from multi-year data. Comparing rates for small areas would compound the instability of those rates. The same problems are encountered with data that describe the character of prenatal care in small and rural areas, although these Indices are based on assessments of all births, the degree to which prenatal care meets standards of adequacy in smaller and less populated areas may vary from year to year due to isolated events or poor care for a limited number of newborns due to factors that do not reflect the character of the health care in the area (e.g. weather, relocation).

[2] These data are reported by the Census Bureau and are ''imputed'' from other variables (reported ethnicity and the likelihood of being a refugee or immigrant). The data are not collected directly.

[3] The mortality rate varies widely according to the age structure of a place. A much higher proportion of elderly is often associated with a much higher mortality rate. Adjusting for the age structure allows for a better comparison of the mortality burden of the community relative to its risk.

To calculate the adjustment factors or ''weights,'' the actual value of each high need indicator was converted to a percentile relative to the national county distribution, using a conversion table (see Table IV–6). For all variables except population density, the theoretically worst actual value corresponded to the 99th percentile (e.g., the higher the unemployment rate in an area, the higher the percentile.) In Wichita, Kansas for example, 3.59% of the population were unemployed. Table IV–6 is used to translate this percentage into a percentile: In this case, Wichita falls in the 24th percentile.

TABLE IV–6.—HIGH NEED INDICATORS—BREAKPOINTS FOR CONVERSION FROM COMMUNITY VALUES TO NATIONAL PERCENTILES *

Percentile	Poverty	Unemp	Elderly	Density	Hispanic	Non white	Death rate	LBW	IMR
1	13.31	1.70	6.32	0.66	0.13	0.23	0.674	3.23	0.00
2	16.15	1.90	7.55	1.01	0.19	0.30	0.729	3.66	0.00
3	18.29	2.10	8.18	1.49	0.23	0.36	0.766	3.94	0.00
4	19.74	2.20	8.79	1.79	0.26	0.40	0.788	4.13	0.00
5	21.15	2.30	9.34	2.16	0.29	0.45	0.805	4.32	3.09
6	22.27	2.40	9.70	2.54	0.30	0.48	0.816	4.44	3.49
7	23.25	2.40	9.97	3.01	0.33	0.53	0.826	4.60	3.89
8	24.24	2.50	10.23	3.38	0.34	0.58	0.837	4.69	4.13
9	25.01	2.60	10.50	3.80	0.36	0.61	0.846	4.80	4.43
10	25.68	2.70	10.71	4.24	0.38	0.64	0.853	4.88	4.63
11	26.25	2.70	10.90	4.73	0.40	0.67	0.861	4.95	4.76
12	26.83	2.80	11.11	5.32	0.41	0.71	0.867	5.02	4.90
13	27.36	2.90	11.26	6.23	0.42	0.76	0.873	5.10	4.99
14	27.83	2.90	11.43	6.82	0.44	0.79	0.878	5.16	5.09
15	28.42	3.00	11.61	7.82	0.46	0.83	0.883	5.22	5.22
16	28.93	3.10	11.75	8.41	0.47	0.88	0.889	5.28	5.33
17	29.39	3.10	11.92	9.36	0.49	0.93	0.894	5.34	5.43
18	29.91	3.20	12.06	9.97	0.50	0.97	0.899	5.38	5.55
19	30.29	3.20	12.17	10.98	0.51	1.01	0.903	5.42	5.63
20	30.66	3.30	12.30	11.96	0.53	1.06	0.908	5.47	5.74
21	31.12	3.30	12.46	13.02	0.55	1.11	0.913	5.52	5.86
22	31.57	3.40	12.57	13.90	0.56	1.16	0.917	5.57	5.91
23	31.90	3.40	12.72	14.60	0.58	1.20	0.920	5.60	6.00
24	32.24	3.50	12.82	15.78	0.59	1.27	0.925	5.65	6.08
25	32.62	3.60	12.94	16.66	0.60	1.33	0.928	5.71	6.17

TABLE IV–6.—HIGH NEED INDICATORS—BREAKPOINTS FOR CONVERSION FROM COMMUNITY VALUES TO NATIONAL PERCENTILES *—Continued

Percentile	Poverty	Unemp	Elderly	Density	Hispanic	Non white	Death rate	LBW	IMR
26	32.98	3.60	13.04	17.63	0.62	1.40	0.932	5.76	6.27
27	33.43	3.70	13.14	18.40	0.64	1.49	0.937	5.80	6.32
28	33.71	3.70	13.24	19.03	0.65	1.54	0.938	5.84	6.39
29	34.07	3.80	13.33	19.94	0.67	1.63	0.941	5.88	6.45
30	34.45	3.80	13.41	20.92	0.68	1.73	0.945	5.92	6.53
31	34.83	3.90	13.51	22.15	0.70	1.79	0.948	5.96	6.62
32	35.15	3.90	13.63	22.85	0.72	1.89	0.952	6.00	6.68
33	35.57	4.00	13.73	23.76	0.74	1.99	0.956	6.03	6.74
34	35.85	4.00	13.83	24.61	0.76	2.06	0.958	6.08	6.82
35	36.22	4.10	13.90	25.83	0.78	2.12	0.961	6.12	6.88
36	36.53	4.10	14.02	26.76	0.81	2.20	0.965	6.15	6.95
37	36.82	4.20	14.12	27.67	0.83	2.29	0.968	6.20	7.05
38	37.07	4.30	14.18	28.48	0.85	2.44	0.971	6.24	7.11
39	37.34	4.30	14.26	29.56	0.87	2.57	0.974	6.28	7.18
40	37.62	4.40	14.31	30.35	0.90	2.69	0.978	6.33	7.26
41	37.83	4.40	14.39	31.51	0.93	2.82	0.981	6.36	7.35
42	38.16	4.50	14.49	32.46	0.95	3.04	0.985	6.41	7.42
43	38.35	4.50	14.57	33.33	0.98	3.18	0.989	6.45	7.48
44	38.63	4.60	14.67	34.49	1.01	3.35	0.992	6.49	7.55
45	38.85	4.60	14.76	35.63	1.04	3.49	0.996	6.54	7.61
46	39.14	4.70	14.84	36.72	1.07	3.67	0.999	6.60	7.67
47	39.44	4.80	14.94	37.69	1.11	3.87	1.002	6.63	7.74
48	39.74	4.80	15.00	38.72	1.15	4.04	1.005	6.67	7.81
49	40.06	4.90	15.12	39.88	1.20	4.22	1.009	6.70	7.86
50	40.31	4.90	15.20	41.38	1.24	4.44	1.013	6.76	7.91
51	40.61	5.00	15.31	42.64	1.27	4.65	1.018	6.78	7.98
52	40.93	5.00	15.43	44.24	1.30	4.90	1.021	6.82	8.08
53	41.21	5.10	15.52	45.78	1.35	5.17	1.024	6.86	8.14
54	41.49	5.20	15.63	47.24	1.39	5.50	1.027	6.91	8.19
55	41.72	5.20	15.71	48.65	1.44	5.81	1.030	6.96	8.27
56	42.04	5.30	15.78	49.94	1.49	6.12	1.034	7.00	8.32
57	42.35	5.30	15.91	51.61	1.54	6.37	1.039	7.06	8.43
58	42.62	5.40	15.99	53.18	1.60	6.72	1.042	7.10	8.50
59	42.98	5.50	16.09	54.53	1.65	7.03	1.045	7.14	8.58
60	43.38	5.50	16.21	56.26	1.72	7.31	1.049	7.20	8.66
61	43.67	5.60	16.30	58.03	1.80	7.74	1.052	7.25	8.76
62	44.01	5.70	16.39	61.20	1.88	8.23	1.055	7.29	8.81
63	44.25	5.80	16.52	63.54	1.98	8.69	1.060	7.33	8.87
64	44.65	5.90	16.67	66.32	2.08	9.24	1.064	7.38	8.92
65	44.90	5.90	16.76	68.59	2.16	9.60	1.067	7.44	9.02
66	45.15	6.00	16.86	70.91	2.26	9.97	1.071	7.50	9.11
67	45.38	6.10	16.96	73.19	2.37	10.40	1.074	7.55	9.18
68	45.77	6.30	17.11	74.78	2.48	10.96	1.079	7.61	9.24
69	46.13	6.40	17.24	79.13	2.60	11.54	1.083	7.65	9.35
70	46.52	6.50	17.38	82.37	2.74	12.36	1.087	7.73	9.41
71	46.90	6.60	17.49	85.72	2.89	13.18	1.093	7.78	9.54
72	47.19	6.70	17.64	88.76	3.05	14.08	1.097	7.83	9.64
73	47.48	6.80	17.76	92.97	3.17	14.81	1.102	7.90	9.76
74	47.85	6.90	17.90	97.05	3.35	15.80	1.108	7.95	9.89
75	48.14	7.00	17.99	101.55	3.58	16.60	1.112	8.01	10.00
76	48.49	7.10	18.17	107.04	3.78	17.38	1.117	8.07	10.16
77	48.83	7.30	18.33	113.07	4.03	18.18	1.122	8.14	10.27
78	49.15	7.30	18.48	120.40	4.35	19.40	1.127	8.23	10.34
79	49.66	7.50	18.64	129.38	4.61	20.67	1.132	8.30	10.50
80	50.03	7.70	18.88	137.50	5.04	22.01	1.137	8.42	10.63
81	50.39	7.80	19.10	147.51	5.62	23.26	1.143	8.48	10.75
82	50.88	7.90	19.29	157.66	5.99	24.48	1.146	8.56	10.94
83	51.22	8.00	19.53	168.72	6.64	25.73	1.153	8.69	11.11
84	51.70	8.10	19.79	184.45	7.43	26.83	1.160	8.81	11.28
85	52.21	8.20	20.09	198.45	8.05	28.24	1.167	8.93	11.53
86	52.63	8.40	20.31	215.14	8.88	30.57	1.173	9.04	11.76
87	53.05	8.60	20.62	236.02	9.74	31.78	1.181	9.16	11.98
88	53.51	8.80	20.89	264.75	10.66	33.74	1.190	9.24	12.25
89	54.01	9.00	21.25	291.58	12.34	35.30	1.200	9.36	12.50
90	54.75	9.30	21.54	321.29	13.82	37.43	1.210	9.58	12.81
91	55.46	9.50	21.92	357.86	15.88	39.16	1.218	9.77	13.15
92	56.23	9.80	22.33	413.68	17.90	41.17	1.230	9.92	13.58
93	57.26	10.10	22.67	488.71	21.81	43.77	1.238	10.17	13.87
94	58.23	10.50	23.16	595.16	25.73	46.18	1.252	10.35	14.21
95	59.13	10.80	23.53	755.53	28.66	48.01	1.268	10.55	14.79
96	61.07	11.50	24.53	995.22	34.72	52.62	1.289	10.87	15.63

TABLE IV–6.—HIGH NEED INDICATORS—BREAKPOINTS FOR CONVERSION FROM COMMUNITY VALUES TO NATIONAL PERCENTILES *—Continued

Percentile	Poverty	Unemp	Elderly	Density	Hispanic	Non white	Death rate	LBW	IMR
97	62.59	12.20	25.06	1356.41	42.03	57.51	1.310	11.31	16.56
98	65.07	13.20	26.22	1759.93	48.46	62.78	1.341	11.72	17.54
99	68.05	15.20	27.75	3090.35	65.75	69.42	1.407	12.47	19.70

Data Sources: Census Estimates from Claritas 1998; Bureau of Labor Statistics 1998, National Center for Health Statistics 1998.

The resulting percentile rankings for each of the high need indicators in the area are then converted to a score, using a second table (see Table IV–7), which expresses the results of the regression analysis in terms of partial scores or weights for each indicator. Using Table IV–7 and using Wichita as an example, we see that a percentile ranking of 24 for unemployment translates into a score of 32.21.

TABLE IV–7.—SCORES FOR HIGH NEED INDICATORS, GIVEN THEIR NATIONAL PERCENTILES

Percentile	Poverty	Unemp	Elderly	Density	Hispanic	Non white	Death rate	LBW/IMR
0	0.00	0.00	0.00	995.20	0.00	0.00	0.00	0.00
1	3.01	1.18	0.54	831.13	0.81	0.00	0.82	0.72
2	6.04	2.37	1.09	735.15	1.64	0.00	1.65	1.44
3	9.11	3.58	1.65	667.05	2.47	0.00	2.49	2.17
4	12.21	4.79	2.21	614.23	3.31	0.00	3.33	2.91
5	15.34	6.02	2.77	571.07	4.15	0.00	4.19	3.65
6	18.50	7.26	3.34	534.58	5.01	0.00	5.05	4.40
7	21.70	8.52	3.92	502.98	5.88	0.00	5.93	5.17
8	24.93	9.79	4.51	475.10	6.75	0.00	6.81	5.93
9	28.20	11.07	5.10	450.16	7.64	0.00	7.70	6.71
10	31.50	12.37	5.69	427.59	8.53	0.00	8.60	7.50
11	34.84	13.68	6.30	407.00	9.44	0.00	9.52	8.29
12	38.22	15.00	6.91	388.05	10.35	0.00	10.44	9.10
13	41.64	16.35	7.53	370.51	11.28	0.00	11.37	9.91
14	45.10	17.70	8.15	354.18	12.21	0.00	12.32	10.73
15	48.59	19.08	8.78	338.90	13.16	0.00	13.27	11.57
16	52.13	20.46	9.42	324.55	14.12	0.00	14.24	12.41
17	55.71	21.87	10.07	311.02	15.09	0.00	15.22	13.26
18	59.34	23.29	10.72	298.22	16.07	0.00	16.21	14.12
19	63.00	24.73	11.39	286.08	17.07	0.00	17.21	15.00
20	66.72	26.19	12.06	274.53	18.07	0.00	18.22	15.88
21	70.48	27.67	12.74	263.52	19.09	0.00	19.25	16.78
22	74.29	29.16	13.43	253.00	20.12	0.00	20.29	17.68
23	78.15	30.68	14.12	242.92	21.17	0.00	21.34	18.60
24	82.06	32.21	14.83	233.26	22.23	0.00	22.41	19.53
25	86.02	33.77	15.55	223.98	23.30	0.00	23.49	20.48
26	90.03	35.34	16.27	215.04	24.39	0.00	24.59	21.43
27	94.10	36.94	17.01	206.43	25.49	0.00	25.70	22.40
28	98.22	38.56	17.75	198.13	26.61	0.00	26.83	23.38
29	102.40	40.20	18.51	190.10	27.74	0.00	27.97	24.38
30	106.64	41.86	19.28	182.34	28.89	0.00	29.13	25.39
31	110.95	43.55	20.05	174.83	30.05	0.00	30.30	26.41
32	115.31	45.27	20.84	167.54	31.23	0.00	31.49	27.45
33	119.74	47.01	21.64	160.47	32.43	0.00	32.70	28.50
34	124.24	48.77	22.45	153.61	33.65	0.00	33.93	29.57
35	128.80	50.56	23.28	146.94	34.89	0.00	35.18	30.66
36	133.44	52.38	24.12	140.46	36.14	0.00	36.45	31.76
37	138.15	54.23	24.97	134.15	37.42	0.00	37.73	32.88
38	142.93	56.11	25.83	128.00	38.72	0.00	39.04	34.02
39	147.79	58.02	26.71	122.00	40.03	0.00	40.37	35.18
40	152.74	59.96	27.61	116.16	41.37	0.00	41.72	36.36
41	157.76	61.93	28.51	110.46	42.73	1.39	43.09	37.55
42	162.87	63.94	29.44	104.89	44.12	2.81	44.48	38.77
43	168.07	65.98	30.38	99.44	45.53	4.25	45.90	40.01
44	173.36	68.06	31.33	94.12	46.96	5.71	47.35	41.27
45	178.75	70.17	32.31	88.92	48.42	7.20	48.82	42.55
46	184.24	72.33	33.30	83.83	49.90	8.72	50.32	43.86
47	189.83	74.52	34.31	78.85	51.42	10.27	51.85	45.19
48	195.52	76.75	35.34	73.97	52.96	11.85	53.40	46.54
49	201.33	79.03	36.39	69.18	54.53	13.46	54.99	47.92
50	207.25	81.36	37.46	64.50	56.14	15.10	56.60	49.33
51	213.29	83.73	38.55	59.90	57.77	16.77	58.25	50.77
52	219.45	86.15	39.66	55.39	59.44	18.48	59.94	52.24
53	225.75	88.62	40.80	50.97	61.15	20.22	61.66	53.74
54	232.18	91.15	41.96	46.62	62.89	22.00	63.41	55.27

TABLE IV–7.—SCORES FOR HIGH NEED INDICATORS, GIVEN THEIR NATIONAL PERCENTILES—Continued

Percentile	Poverty	Unemp	Elderly	Density	Hispanic	Non white	Death rate	LBW/IMR
55	238.75	93.73	43.15	42.36	64.67	23.82	65.21	56.83
56	245.47	96.36	44.37	38.17	66.49	25.68	67.04	58.43
57	252.34	99.06	45.61	34.05	68.35	27.58	68.92	60.07
58	259.38	101.82	46.88	30.01	70.26	29.53	70.84	61.74
59	266.59	104.65	48.18	26.03	72.21	31.53	72.81	63.46
60	273.97	107.55	49.52	22.11	74.21	33.57	74.83	65.21
61	281.54	110.52	50.89	18.27	76.26	35.67	76.89	67.02
62	289.30	113.57	52.29	14.48	78.36	37.82	79.02	68.87
63	297.28	116.70	53.73	10.75	80.52	40.03	81.19	70.76
64	305.47	119.92	55.21	7.08	82.74	42.30	83.43	72.71
65	313.89	123.22	56.73	3.47	85.02	44.63	85.73	74.72
66	322.56	126.63	58.30	−0.09	87.37	47.03	88.10	76.78
67	331.49	130.13	59.91	−3.60	89.79	49.50	90.54	78.91
68	340.69	133.74	61.58	−7.06	92.28	52.05	93.05	81.10
69	350.18	137.47	63.29	−10.46	94.85	54.68	95.64	83.36
70	359.98	141.32	65.06	−13.82	97.51	57.39	98.32	85.69
71	370.12	145.30	66.90	−17.13	100.25	60.20	101.09	88.10
72	380.61	149.41	68.79	−20.40	103.10	63.11	103.95	90.60
73	391.49	153.68	70.76	−23.62	106.04	66.12	106.92	93.19
74	402.77	158.11	72.80	−26.79	109.10	69.24	110.01	95.87
75	414.50	162.72	74.92	−29.93	112.27	72.49	113.21	98.67
76	426.70	167.51	77.12	−33.02	115.58	75.87	116.54	101.57
77	439.43	172.50	79.42	−36.08	119.03	79.39	120.02	104.60
78	452.72	177.72	81.83	−39.09	122.63	83.07	123.65	107.76
79	466.63	183.18	84.34	−42.07	126.39	86.93	127.45	111.08
80	481.22	188.91	86.98	−45.01	130.35	90.97	131.43	114.55
81	496.55	194.93	89.75	−47.92	134.50	95.21	135.62	118.20
82	512.72	201.28	92.67	−50.78	138.88	99.69	140.04	122.05
83	529.81	207.98	95.76	−53.62	143.51	104.42	144.70	126.11
84	547.94	215.10	99.03	−56.42	148.42	109.44	149.65	130.43
85	567.23	222.68	102.52	−59.19	153.65	114.79	154.92	135.02
86	587.86	230.77	106.25	−61.93	159.23	120.50	160.56	139.93
87	610.02	239.47	110.26	−64.63	165.23	126.64	166.61	145.21
88	633.95	248.87	114.58	−67.31	171.72	133.26	173.15	150.90
89	659.97	259.08	119.28	−69.95	178.76	140.47	180.25	157.10
90	688.47	270.27	124.43	−72.57	186.48	148.36	188.04	163.88
91	719.97	282.63	130.13	−75.15	195.02	157.08	196.64	171.38
92	755.19	296.46	136.49	−77.71	204.56	166.84	206.26	179.76
93	795.11	312.13	143.71	−80.24	215.37	177.89	217.16	189.27
94	841.20	330.23	152.04	−82.75	227.85	190.66	229.75	200.24
95	895.72	351.63	161.89	−85.23	242.62	205.75	244.64	213.21
96	962.43	377.82	173.95	−87.68	260.69	224.23	262.86	229.10
97	1048.45	411.58	189.50	−90.11	283.99	248.05	286.36	249.57
98	1169.68	459.18	211.41	−92.51	316.83	281.62	319.47	278.43
99	1376.93	540.53	248.87	−94.89	372.97	339.02	376.07	327.76

This same conversion of percentages to percentiles to scores is then done for each of the nine high need indicators. An example is included in Table IV–8 to illustrate this step, again using Wichita as an example.

TABLE IV–8

High need indicators		Wichita County, KS
% < 200% Poverty	.....	49.8%
	Percentile	79
	Score	467
Unemployment Rate.	.....	3.59%
	Percentile	24
	Score	32
% 65+	.....	15.6%
	Percentile	53
	Score	41
Population/Sq Mile	.....	3.7%
	Percentile	8
	Score	475
% Hispanic	.....	16.4%
	Percentile	91
	Score	195
% Non-White	.....	1.2%
	Percentile	22
	Score	0
Death Rate	.....	.67%
	Percentile	0
	Score	0
LBW (Low Birth Weight).	.....	7.78%
	Percentile	71
	Score	88
IMR (Infant Mortality Rate).	.....	N/A *
	Percentile. Score.	
Total Score To Be Added.	.....	1298

** The infant mortality rate was not used for Wichita County since it was unstable (too few events-births and death in low population county). The alternative low birth weight rate was used.*

Because the same metric (i.e. population-to-provider ratio) was used to calculate both the effective barrier-free population and the scores, the scores can simply be added to the effective barrier-free population-to-

primary care provider ratio to derive the final adjusted population-to-primary care provider ratio. This adjusted ratio reflects the combination of the ''effective barrier free population'' (age-adjusted) and the effect of community needs and use factors.

These ratios can then be used to reflect the relative need of the areas, with the highest ratios indicating the areas of greatest need. An example is included in Table IV–9, again using Wichita as an example and Burlington, New Jersey for comparison. Column G reflects the new measure of underservice proposed in these rules and is intended to resemble the current MUA/P method in that it creates a score or index of underservice.

TABLE IV–9

County name	Total pop 1999	Effective barrier-free population	Total FTE primary care	Actual population to FTE ratio (A÷C)	Effective barrier-free pop/ FTE ratio (B÷C)	Score from weights	Final adjusted effective barrier-free pop/ FTE ratio (E+F)
	A	B	C	D	E	F	G
Wichita, KS	2,436	2,959	2.5	974	1184	1298	2482
Burlington, NJ ..	416,853	482,594	411.2	1014	1173.6	251.6	1425.3

Even though there are far fewer people in Wichita than in Burlington and the actual population-to-provider ratios are roughly equivalent (column D), this methodology shows that the true need in Wichita (i.e., the level of care the Wichita population would demand if they did not have any barriers to care) is actually much greater than in Burlington (column G).

Though this underlying methodology is conceptually and computationally complex, one advantage of this new method is that the actual calculations involved have been automated through the use of the conversion tables. The new method is, therefore, relatively simple to implement by State and local applicants. The system has also been developed in a way that allows an applicant to enter their area-specific or population-specific data into an Internet-based query system and have their score returned in real time. This would allow applicants to compare their level of underservice with those of other designated and undesignated areas and populations in an accessible system. Moreover, the use of a tabular method for scoring allows for future changes in the scaling of the scores when there are changes in the distribution of values. It also allows HRSA to update these values without having to change the overall approach to developing scores.

Step 5: Comparing the final adjusted effective barrier-free population-to-provider ratio against a threshold of underservice.

The fifth step in this method involves comparing the final adjusted ratios for various areas against a threshold of underservice. A county or other RSA will be designated as undeserved if its final adjusted ratio equals or exceeds this threshold. The threshold level proposed is 3,000 persons for every FTE primary care clinician. A population of 3,000, distributed according to the national average age-sex distribution, is about twice the normal load for a busy primary care physician, which is approximately 1500:1. Accordingly, when the threshold level of 3000:1 is reached, an area is already one primary care clinician short for each primary care clinician it has. The impact analysis in Section VI below deals with the effect of this choice on the number and population of designated areas.

While there is no one figure that is a universally accepted standard, the 3000:1 threshold is based on an adequacy ratio of 1500:1 as noted above and is similar to the target ratio used in a number of organizations and identified in a variety of studies:

- A study of the Canadian system and its process for measuring medical underservice, for example, identified 1500:1 or greater as a level of underservice appropriate for a recruitment incentive program (Goldsmith 2000).
- A Veterans Administration study recommended a target for a primary care panel between 1,000–1,400 patients (Perlin and Miller, 2003).
- According to the Bureau of Primary Health Care (unpublished data), Community Health Centers averaged 1,439 medical users per medical FTE in 1999, and this number is very consistent with the 1997 and 1998 figures. In addition, the NHSC reports an average of 1,527 patients per provider.
- A George Washington University (GWU) report on Standards for Managed Care related to the Balanced Budget Act of 1997 found that State Medicaid programs most frequently required that Medicaid HMOs have a panel size of 1500:1
- An article published in the *Journal of the American Medical Association* suggested benchmark ratios to compare relative supply that were slightly above and below 1500:1 (Goodman et al, 1996).
- Using data from the National Ambulatory Medical Care Survey (NAMCS), which estimates visits per person per year to physicians, the national mean ratio of primary care physicians per population of 1498:1, very close to 1500:1.

The 3000:1 threshold is a very conservative estimate of the level of need and identifies the worst quartile of the areas analyzed, which is a similar standard to that used when the original thresholds were set in the existing designation methods. Moreover, this threshold is consistent with the level used for HPSA designation of high-need areas and population groups in the past.

Step 6: Determining tiers of shortage.

An important issue in the preparation of these regulations is whether federally-sponsored primary care providers who are present in currently-designated areas should be included in computations when updating the designations. On the one hand, including these providers in the provider count could result in ''yo-yo'' effects, in which an area is designated as underserved; a CHC or NHSC intervention occurs as a result of the designation; those practitioners are then counted, resulting in a loss of the designation; the intervention is removed; the area again becomes eligible for designation; and the cycle repeats itself. On the other hand, there are concerns about areas remaining on the list of designations whose needs have already been met through a federally supported program or provider. This has led to situations in which additional resources are allocated to an area where providers or clinics have previously been placed to help meet the needs of the area.

To deal with both sides of this issue, we propose to publish a two-tiered list of designations. Each designated area or population group will be identified as having either a first or second tier of shortage. Tier 1 designations will be those areas which continue to exceed the threshold even when all federal resources placed in the area are counted. Tier 2 designations will be those areas exceed the threshold only when certain federal resources placed in those areas are excluded.

Thus, one final set of calculations is undertaken to identify those ''Tier 2'' areas which fall below the threshold when certain federally-sponsored clinicians are counted but would exceed the threshold if they were withdrawn. The federally-sponsored clinicians considered here are NHSC affiliated clinicians, clinicians obligated under the State Loan Repayment Program (SLRP) (a loan repayment program involving joint Federal and State funding), physicians with J–1 visa return-home waivers, and other clinicians providing services at health centers funded under Section 330.

When determining Tier 2 designations, these federally-sponsored clinicians are not counted in the denominator of the area's ratio. Finally, steps 3 and 4 are repeated to recalculate the final adjusted ratio using this lower clinician count and to compare it with the designation threshold. The areas exceeding the threshold when this procedure is followed are identified as ''Tier 2'' designations.

Both types of designations would be eligible for federal programs authorized to place resources in MUPs or HPSAs. However, Tier 2 areas would typically be eligible only to maintain the approximate levels of federal resources already deployed, while Tier 1 areas could apply for additional resources.

C. Example Calculations

Table IV–10 shows calculations for actual population-to-provider ratios, the effective barrier-free population-to-provider ratios, the scores based on high need indicator percentiles for the area, and the resulting population to primary care clinician ratios.

TABLE IV–10.—EXAMPLE OF CALCULATION OF ADJUSTED POPULATION-TO-PRIMARY CARE CLINICIAN RATIO

County name	Total pop 1999	Effective barrier-free population	Total FTE primary care	Effective barrier-free pop/FTE ratio (B÷C)	Score from weights	''Tier 1'' Final adjusted effective barrier-free pop/FTE ratio (D+E)	Ratio w/o fed FTE (C-Federally sponsored clinicians)	''Tier 2'' Final adjusted effective barrier-free pop/FTE ratio (G+E)
	A	B	C	D	E	F	G	H
Wichita, KS	2,436	2,959	2.5	1184	1298	2482	*5918	7216
Burlington, NJ	416,853	482,594	411.2	1173.6	251.6	1425.3	1179.4	1431.0
Coconino AZ	116,977	127,492	91.7	1389.6	1161.4	2551	1444.7	2606.1
St. Lucie, FL	180,937	222,417	105.1	2116.5	918.3	3034.8	2314.7	3233.0
E. Baton Rouge, LA	395,635	447,680	379.5	1179.7	640.2	1819.8	1185.9	1826.1
Dunklin, MO	33,006	40,146	22.8	1764.6	1469.4	3234.1	1764.6	3234.1
Bronx, NY	1,185,970	1,366,382	1210.6	1128.7	1665.3	2793.9	1199.6	2864.8
Guernsey, OH	40,854	48,273	20.2	2389.8	751.7	3141.5	2389.8	3141.5
Rusk, WI	15,449	18,501	10.8	1713.0	1070.5	2783.6	8043.7	9114.2

** Non-federally sponsored FTE = 0.5; 2959/0.5 = 5917/1.*

According to these calculations, Wichita would not qualify for designation as a Tier 1 underserved area. However, Wichita would qualify for designation as a Tier 2 underserved area when federally sponsored FTEs are deleted and high need weights are added.

D. Alternative Approaches Considered

A variety of other alternative measures and options were considered during the development of the method. The research team at the University of North Carolina conducted a comprehensive review of current and alternative measures of underservice, as noted in a 1995 report (Ricketts *et al.*, 1995. As part of this effort, two workshops were convened in 1999 and 2000 on modeling health professions supply and healthcare needs and on measurement of underservice. Several of the options considered and the reasons for not pursuing them are described below:

—There was consideration of using the *simple population to provider ratio as the index*, but there was no consensus on the ''right'' ratio, and there was strong interest in a more multi-factorial approach to take other high need factors into account. The PCO Work Group's initial recommendations were based primarily on the ratio, with adjustments to the ratio for high needs, similar to the current process for HPSAs. After continued discussion with HRSA staff and the contractors, the Work Group acknowledged that the proposed methodology accomplished much the same by incorporating the need variables into the analysis rather than adjusting the target ratio, although final agreement was held pending review of the impact data. The approach used in the 1998 proposal, which was an Index of Primary Care Services from 1–100 based on a variety of ''need'' factors, was not chosen partly due to the history and partly due to the fact that such a scale had no intrinsic meaning as a measure of access, while a score related to a ratio of population to the providers is more easily understood across the board.

—We considered using *hospitalization rates for Ambulatory Care Sensitive Conditions (ACSC)* as proxies for underservice as they could reflect failures in the primary care system to meet the needs of the population. However, comprehensive data are not universally available, particularly at the sub-county level, where primary care analysis is based. In addition, the analysis indicates that these rates are more indicative of problems with access to care related to income, employment, and race, rather than to lack of providers or services.

—*Alternative methodologies used in Canada and the United Kingdom (UK)* were reviewed for possible use. In Canada, however, each province had a different methodology, which did not meet the comprehensive national

approach. In the UK, the focus was specifically on the location of General Practitioners (GPs), whose practice locations are partially controlled by the government. In addition, they were partially based on interviews with GPs to identify areas of underservice, which is not an approach that can be replicated on a national scale and has no scientific basis. Both countries did, however, have models that incorporated many of the same concepts used in this proposal, including distance to care (which has a functional similarity to population density in our model), census variables such as ''class,'' unemployment, age, and the availability of providers. This reinforces the validity of taking into account such variables when measuring access to care and underservice.

—Extensive research on the state of the art in health care access led to a paper by Dr. Donald Taylor (Taylor *et al.*, 2000) which examined the relationship between theoretical need for care and resources to provide the care. His conclusion was that there is no one simple construct of underservice and no unitary measure, but that there are several interlocking components that need to be considered. These conceptual components were not actually alternative measures of underservice but five components of a comprehensive model. His hypothetical model, at the county level, included the following components:

○ Momentum: the economic and population dynamics of an area and changes over time

○ Demand: based on the age and gender of the population

○ Infrastructure: presence of hospitals and other providers, insurance coverage, etc.

○ Need: based on proxies for health status

○ FIT: describes the degree of ''fit'' of the various factors, which represents the level of service or underservice

The conceptual model, the *Taylor Indices of Underservice*, was tested using simultaneous multiple correlations and was found to be robust for the prediction of demand, infrastructure and needs but not for FIT and momentum. A latent variables testing method was applied and the concept of FIT was supported via this analysis. A second order confirmatory analysis (CFA) supported this result, which suggested that a combination of variables that reflect demand and infrastructure with appropriate proxies for need—especially the age structure of the community—could generate a useful index, FIT, that summarized community underservice. The current proposal builds on this notion of FIT as a latent indicator of overall need, as reflected in the score that is calculated in the process.

For several reasons, Dr. Taylor's approach could not have been used without modification for purposes of this rulemaking. For example, this approach did not appear to correlate well with indicators of utilization, which is considered a reliable indicator of access. Moreover, counties are not considered an appropriate level of analysis in many areas served by HRSA's programs.

However, the principles and detailed analytical methods used in Dr. Taylor's model were incorporated to a large extent in the current proposed methodology, which includes age/gender utilization projections for expressed need or demand, need (as captured by socio-demographic and health status indicators), and infrastructure (as reflected in unemployment, poverty, and availability of providers).

—*Years of Potential Life Lost (YPLL)* was also considered as a potential measure. However, similar to the ACSC analysis, there was a much stronger correlation between socio-economic factors (race, education, etc.) than with the presence or absence of primary care providers and services.

V. Description of the Proposed Regulations

A. Procedures (Subpart A)

The proposed approach to processing MUA, MUP and HPSA designation requests, set forth in Subpart A below, is an adaptation of the HPSA designation procedures currently in effect, as codified at 42 CFR Part 5. The previous procedures have been modified to include the particular comment and consultation requirements of the MUP legislation, but otherwise closely follow the present HPSA designation procedures, including those specifically required by statute.

As before, the proposed procedures involve an interactive process between the Secretary, the States, and individual applicants [see § 5.3(a)–(h)]. Any individual, community group, State or other agency may apply for designation of a geographic area or population group MUP and/or HPSA, or for a facility HPSA; the Secretary may also propose such designations. Such requests are reviewed both at State and federal levels, including a 30-day comment period for Governors, State health agency contacts, State Offices of Rural Health, county or city health officials, State primary care associations (non-profit membership organizations representing federally qualified health centers and other community-based providers of primary care), appropriate medical, dental or other health professional societies, and heads of any facilities proposed for HPSA designation. Efforts are made to complete action on new designation requests within 60 days of receipt.

Annually, the Secretary will review all designations utilizing the proposed methodology, with emphasis on those for which updated data have not been submitted during the previous three years; this extends to MUA/Ps the review process previously used for HPSAs [see § 5.3(d)]. As part of such reviews, the latest relevant data from national sources described earlier (for those previously-designated areas which the Secretary requires be updated) will be made available by the Secretary to the appropriate State entities and others for review and comment. If no corrections are provided, the national data will be used as the Secretary's basis for decisions. (The national data for census-collected variables are not typically corrected during the designation process with data from State and local sources. On the other hand, State and local data regarding provider locations and FTEs are often more up-to-date and accurate; use of such data in designation will continue to be encouraged where readily available.)

An expedited review process is also proposed for urgent cases [see § 5.3(i)], allowing designations to be obtained within 30 days of the date of request when a practitioner dies, retires, or leaves an area, thereby causing a sudden and dramatic increase in the area's population-to-clinician ratio. The number of requests that will be processed per year on this expedited basis is limited.

Results of designation reviews will be provided in writing or electronically to applicants, State partners, and other interested parties [see § 5.4]. No less than annually, complete lists of designated HPSAs/MUPs will be published by notice in the **Federal Register** that an updated list will be posted on the HRSA Web site; more frequent updates will be posted online continuously, reflecting designation decisions as they occur. Two tiers will be identified in published or posted listings of designated shortage areas. As discussed previously, the first tier will include only those areas that meet the

designation criteria when all relevant (i.e., active primary care) clinicians in the area are counted, while the second tier will include those additional areas that meet the criteria when certain Federally-sponsored clinicians are subtracted.

The regulation also includes a section [§ 5.5] describing procedures for the transition from the current designation system to the new system. These include a process for resolution of any overlapping boundaries that may exist between currently-designated primary care HPSAs and currently-designated MUA/Ps at the time the new regulations go into effect. The new criteria for designation of MUA/Ps and/or primary care HPSAs will be phased in over a period of three years from the date of publication of the final rule in the **Federal Register**, with State input on the review schedule but with the oldest MUA/P and primary care HPSA designations being reviewed first. This will relieve States, communities and others from having to provide updated data on all designations that are more than three years old during the first year the new regulations go into effect.

In addition, the regulation includes a section [§ 5.6] describing how the ''automatic designation'' provisions of the Health Care Safety Net Amendments of 2002, as amended by Public Law 108–163, will be implemented. Briefly, all FQHC and RHC delivery sites that are automatically designated will be listed separately as ''automatic'' HPSAs until the area or population group they serve or the facility achieves designation under the proposed criteria or until 6 years from the date of their automatic designation, whichever comes first. Any FQHC or RHC sites still being carried on the list of ''automatically'' designated sites six years from their date of automatic designation will then be required to demonstrate that they meet the criteria in order to remain on the list, through the review process outlined in section § 5.6.

B. General Criteria for Designation of Geographic Areas as MUAs/Primary Care HPSAs

The criteria and methodology for designation of geographic areas as MUAs and primary care HPSAs are set out in Subpart B (§ 5.102). In brief, areas to be designated must first be RSAs for the delivery of primary care services. As described earlier, an adjusted population-to-primary care clinician ratio is then computed for each such area, by combining the area's ''effective barrier-free'' population (based on age and gender utilization patterns) to its supply of primary care clinicians, with adjustments for access barriers through additive scores for a defined group of demographic, economic, and health status variables. When this adjusted ratio exceeds the designation threshold of 3000:1, the area is eligible for designation. Under certain limited conditions, resources in contiguous areas must also be taken into consideration.

C. Rational Service Areas

The proposed rules would continue to require that each area proposed for geographic designation be a rational area for the delivery of primary care services. A general (or default) definition of the term ''rational service area'' is included [see § 5.103], in terms of geographic size and cohesiveness, which relates its size to the accessibility of primary medical services in the area within 30 minutes travel time, and its cohesiveness to topography, demographic distinctness from contiguous communities, and/or established market patterns. Contiguous RSAs would normally be defined so as to have a separation of at least 30 minutes travel time from the population center(s) of one RSA to the population center(s) of each contiguous RSA, with exceptions for RSAs within high-density portions of metropolitan areas that demonstrate cohesiveness in other ways.

RSAs may be defined in terms of U.S. Census Bureau geographic units, including counties, census tracts, census divisions, and Zip Code Tabulation Areas (ZCTAs), as long as data can be obtained at that level. However, States are allowed the flexibility to define their RSAs in terms of travel time parameters between 20 and 40 minutes, where the final RSA approach to be used is approved by the Secretary.

States are encouraged to develop a State-wide system that subdivides the territory of the State into RSAs, either incrementally or all at once, using the general RSA criteria specified in the proposed rule or State-specific criteria developed through the partnership process just mentioned. Where a State has developed such a statewide system of areas, the designation status of a particular RSA will be determined through application of the proposed geographic HPSA/MUA criteria to current data for the RSA, without regard to contiguous area resources. Elsewhere, the contiguous area considerations set forth in proposed § 5.105 are to be used.

The proposal allows for State and local input, but is expected to greatly reduce the level of effort required at the local and State level. At present, no designation takes place without a specific request being submitted with the required information, including the defined service area, the data on population, physicians, and other appropriate information. Upon publication of a final regulation, HRSA will first score all existing MUAs and HPSAs using the national databases. Areas that qualify using those calculations will be designated as underserved with no need for input from the State or local level. The submission of additional information will only be required for those areas that do not qualify based on national data.

HRSA expects that a significant number of areas will qualify based on national data alone. For example, there were 877 whole county and 803 geographic service area HPSAs as of March 31, 2007. If the majority of these areas meet the criteria using the national calculations, 55 percent of the current designations (excluding the facility designations) would require no action on behalf of the State or local agency. In addition, many areas could be qualified with the submission of revised data on providers alone, which is a much simpler approach than currently required.

Areas where special population groups would need to be defined would continue to require State or local involvement, though we anticipate the number of these would decrease as a result of the inclusion of some of the need factors directly in the formula itself.

D. Applying the Designation Methodology

As mentioned above in section IV.B, the proposed rules provide that the Secretary of HHS will determine an adjusted effective barrier-free population-to-primary care clinician ratio for each RSA considered for a primary care underservice designation. The specific methodology for this calculation is set forth in proposed § 5.104. Tables IV–1 and IV–6 will be updated periodically by notice in the **Federal Register** that updated data will be posted on the HRSA web site as the national utilization data and national distributions of the variables used in the method change. (Updating these tables will not require proposed rulemaking, since the regulations themselves will not be changed.) The timeframe for updates will be determined by the availability of updated data for the nine high need indicators. Table IV–7, which appears in the regulation itself as Appendix A to Part 5, may also be recalibrated periodically, but not necessarily on the same timetable, since

revising it requires repeating the regression analysis.

E. Data Definitions

The proposed rules identify the data elements needed to determine the effective barrier free population, the high need indicator score, the final adjusted population-to-primary care clinician ratio, and the manner of calculation of these variables. See proposed § 5.104(a) to 5.104(c).

F. Population and Clinician Counts

Although the clinician count requirements are similar to those for physicians in the current Part 5, some important changes have been made. Foreign (International) medical graduates who are not citizens or permanent residents, but entered the U.S. on J–1 visas and have had their return-home requirements waived in return for obligated service, and/or are here on H visas, are to be counted in ''first tier'' designation calculations unless they have restricted licenses; they are to be excluded from ''second tier'' designation counts.

Similarly, clinicians providing medical services for the NHSC, as SLRP obligors, or at health facilities funded under section 330 of the Act are counted for the first tier and excluded from the second tier. It should be noted that, although the proposed rules would allow NHSC and section 330 health center practitioners to be excluded from the practitioner count for second tier designations, the numbers of these practitioners already allocated or funded are included by the Department in making decisions as to how to allocate additional NHSC and health center grant resources.

Also, the current HPSA provision allowing the discounting of physicians with restricted practices on a case-by-case basis is proposed to be eliminated because our experience has been that this provision is neither useful nor practical.

G. Non-Physician Primary Care Clinicians

The significant expansion over the past decade in the numbers of NPs, PAs, and CNMs practicing in primary care settings has made their inclusion in counts of primary care clinicians essential to the validity of any revised designation process, particularly in those States and areas where they practice, in effect, as independent providers of care and particularly given their role in the RHC program. However, there has been controversy as to whether available data permit them to be counted accurately and how they should be weighted relative to primary care physicians.

There are several related issues involved. First, significant differences exist among the States as to the scope of practice allowed for these clinicians, including the extent to which they are allowed to work independently, and what medical tasks they are legally allowed to perform. Second, the national databases currently available for them have some limitations, particularly where practice addresses are concerned. While some States have accurate data on the number, location and practice characteristics of these clinicians, others do not. Finally, for those States in which non-physician clinicians can legally provide many of the same services as primary care physicians, exactly how they complement physicians and, therefore, how they should be weighted relative to physicians has not been well-defined.

This proposed rule includes these non-physician clinicians by requiring that all of them be counted with a weight of 0.5 relative to primary care physicians, unless the applicant opts for weighting based on the scope of practice in the State involved. (See State option for weighting described below.) Please note that the 0.5 relative weighting is proposed here only for purposes of estimating primary care clinician counts for shortage area designation purposes; it should not be construed as representing the relative cost or value of these providers' services compared to physician services.

For non-physician clinicians, there has been a long-standing acceptance of counting them as less that a full FTE, for a variety of reasons. In the Bureau of Primary Health Care, and its predecessors, which oversees the FQHC Program, productivity standards and calculations have used the .5 FTE figure. In part, this is a way to encourage these programs to hire non-physician providers in areas where recruitment is difficult but there may be some resistance otherwise to having a mixed practice model. Its use is also consistent with productivity standards currently used by CMS for RHCs and FQHCs, which are 2100 visits per year for NPs and PAs as compared with 4200 visits per year for physicians.

While there is no absolute standard for estimating the FTE contribution of a non-physician provider, there are also a number of studies in the literature that support an estimate of 0.5:

- An Integrated Requirements Model (Sekscenski *et al.*, 1999) in 1999 used a 0.5 FTE calculation.
- An article in Health Affairs in 1997 (Hart *et al.*, 1997) of staffing ratios indicated patient volume levels for NPs from 875–1,000 per NP.

Given the lack of data regarding the impact of adding these providers to the designation process and the continued need to encourage the use of the range of providers who can help meet the needs of the underserved, we believe the 0.5 FTE approach is a reasonable choice for the proposed method.

Data on NPs, PAs and CNMs are available from national sources (''A Comparison of Changes in the Professional Practice of Nurse Practitioners, Physician Assistants, and Certified Nurse Midwives: 1992 and 2000'' The Center for Health Workforce Studies at the University of Albany, available online at *http://bhpr.hrsa.gov/healthworkforce/reports/scope/scope1–2.htm*.) These data will be made available for use as a first approximation, but States will be encouraged to provide more accurate State data, where available.

Some have suggested that different equivalencies be used in different States, depending on the degree of independence allowed by the different State laws. This option is offered in the proposed rule. At the applicant's option, a maximum weighting factor of 0.8 can be used together with a State scope of practice factor between 0.5 and 1.0, using tables from ''Scope of Practice of PAs, NPs, and CNMs in the Fifty States,'' (Wing et al., 2003). This document is available at *http://bhpr.hrsa.gov/healthworkforce/reports/scope/scope1–2.htm*

Those Federally-sponsored NPs, PAs, and CNMs in the NHSC, SLRP, or at health facilities funded under Section 330 would be counted for Tier 1 designations but excluded for Tier 2 designations, just as done for physicians.

H. Contiguous Area Considerations

The previous HPSA criteria required that, when considering any area for designation, resources located in all contiguous areas must be shown to be excessively distant, overutilized, or otherwise inaccessible to the population of the area requested for designation. The approach proposed herein would eliminate this requirement wherever a set of RSAs has been developed, requiring consideration of contiguous area resources only in States where a system of RSAs does not exist, or in those portions of a State where RSAs have not yet been defined. See § 5.105.

I. Population Group Designations

The inclusion in the proposed methodology of a number of variables representing the access barriers and/or

negative health status experienced by certain at-risk populations is likely to decrease the need for specific population group designations, which tend to be more difficult procedurally for both applicants and reviewers. However, the proposed rules continue to provide for certain types of population group designations within geographic areas which, taken as a whole, do not meet the criteria for designation. (See Subpart C.) These generally build on the criteria for designating geographic areas, with several key differences. First, the proposed rules recognize two specific additional types of areas as rational areas for the delivery of primary care services for specific population groups (i.e. agricultural areas for migratory and seasonal agricultural workers; reservations for Native American population groups). Second, each variable is to be calculated based on data for the population group for which designation is sought, as nearly as possible, rather than on the population of the area as a whole.

The eligible population groups specifically identified for designation are: Low income populations (defined to include all those with incomes below 200% of the poverty level); Medicaid-eligible populations; linguistically isolated populations; migrant and seasonal farmworkers and their families; homeless populations; residents of public housing; and Native Americans. A new category of MUP is recognized, consisting of those uninsured and Medicaid-eligible patients who are served by safety net facilities designated as primary care HPSAs under Subpart D. Finally, the category ''other population groups recommended by state and local officials'' is retained, consistent with the MUP statutory authority.

The proposed provisions also allow for HPSA designation of the ''special medically underserved'' populations as defined by section 330 of the PHS Act (as amended by Pub. L. 104–299), which are considered already designated as MUPs. These provisions include a ''simplified'' designation procedure for migrant, homeless and Native American population groups, for use in cases where the area in which the requested population group is located has been defined, data on the number of individuals in the population group is provided and the total is found to exceed 1000, but specific information on the number of FTE clinicians accessible to the population group is not available. In these cases, a population-to-clinician ratio of 3000:1 may be assumed. Requirements for the statutory ''permissible'' designation of ''other population groups recommended by state and local officials'' are included. ''Local officials'' for this purpose are defined. Such requests must document the ''unusual local conditions'' which are the basis for the request; these must involve factors not already considered by the general criteria for designation of areas and population groups as set forth in Subparts A and B.

J. ''Facility Designation Method'': Designation of Facility Primary Care HPSAs

The criteria and procedures for designating facility primary care HPSAs are set out in proposed Subpart D. The current criteria for designation of ''public or non-profit private medical facilities'' as HPSAs are eliminated and replaced by new criteria for the designation of ''safety-net facility'' primary care HPSAs (see proposed § 5.301). These criteria would allow for HPSA designation of facilities not in geographic HPSAs designated under Subpart B, if and when these facilities qualify as ''safety-net facilities'' by virtue of their service to specified minimum percentages of patients that are Medicaid-eligible and/or low income uninsured, as measured by the number of patients treated under a sliding fee scale. Eligibility for this type of designation is limited to FQHCs, RHCs, or other public or non-profit private clinical sites providing primary medical care services on an ambulatory or outpatient basis. The minimum levels of service to indigent uninsured and/or Medicaid-eligibles are described in proposed § 5.301(b) and shown in Table V–1 below.

TABLE V–1.—MINIMUM LEVELS OF SERVICE TO INDIGENT UNINSURED AND/OR MEDICAID-ELIGIBLES

Metropolitan areas	Non-Metropolitan areas (except frontier areas)	Frontier areas
At least 10% of all patients are served under a posted, sliding fee schedule, or for no charge.	At least 10% of all patients are served under a posted, sliding fee schedule, or for no charge.	At least 10% of all patients are served under a posted, sliding fee schedule, or for no charge.
At least 40% of all patients are served either under Medicaid, under a posted sliding fee schedule, or for no charge.	At least 30% of all patients are served either under Medicaid, under a posted, sliding fee schedule, or for no charge.	At least 20% of all patients are served either under Medicaid, under a posted sliding fee schedule, or for no charge.

Payment source documentation to establish initial and ongoing designation as a facility primary care HPSA will be as required by the Secretary. This Safety Net Facility designation would not be recognized by CMS for RHC certification.

The criteria and methodology for designating federal and state correctional institutions and youth detention facilities as primary care HPSAs in § 5.302 are essentially unchanged from those in the current Part 5.

K. Dental and Mental Health HPSAs

The proposed procedures in Subpart A would apply to the designation of dental and mental health HPSAs as well. The criteria currently in use for these types of HPSA designations are contained in Appendices B and C of the current part 5. No changes to these appendices are proposed at this time, but efforts are under way to revise the criteria for dental shortage areas (pursuant to Section 302(d)(1) of the Health Care Safety Net Amendments of 2002) and those for mental health professional shortage areas. When these efforts are complete, Appendices B and C will be revised.

L. Podiatry, Vision Care, Pharmacy And Veterinary Care HPSAs

The existing HPSA regulations at part 5 also contain, in appendices D, E, F, and G, criteria for the designation of vision care, podiatric, pharmacy, and veterinary care HPSAs. These criteria were originally developed for use in connection with student loan repayment programs for individuals in those health professions; however, these programs are no longer authorized or funded. Consequently, the proposed rule would abolish these types of designation by revoking these appendices.

M. Technical and Conforming Amendments

Minor technical and conforming amendments to the CHC regulations at 42 CFR Part 51c are proposed. These amendments refer to Part 5 for definition of designated medically underserved populations, and for factors to be considered in assessing the needs of populations to be served by grantee projects. In addition, they amend the definitions section of the CHC regulations to include a definition of ''special medically underserved populations,'' which refers to language in the statute as amended by Public Law 104–299. This definition states that such populations are not required to be designated pursuant to part 5; this is consistent with their treatment under prior legislation. Finally, the amendments add a provision explicitly stating that a grantee which was serving a designated MUA/P at the beginning of a project period will be assumed to be serving an MUP for the duration of the project period, even if that particular designation is withdrawn during the project period.

VI. Impact Analysis

The agency has conducted an extensive analysis of the national impact of the proposed new designation methodology on the designation status of whole counties, previously-defined part-county geographic HPSAs and MUAs, and low-income population groups, as well as its impact on grant-funded CHCs, NHSC sites, and CMS-certified RHCs. This national analysis was conducted under a HRSA cooperative agreement with UNC's Cecil G. Sheps Center for Health Services Research, using data from national sources for all variables. In order to validate this national analysis, impact analyses using State data sources were performed by Regional Health Workforce Centers and/or PCOs in four states.

In the actual designation review process, evaluation of areas' potential designation status based on application of the criteria to national data would represent only the first step in an exchange with State and local partners. However, we believe that the aggregate results of this impact analysis (in terms of total numbers of areas designated or de-designated nationally) represent a reasonable approximation to the likely results of the real designation process. (If anything, these impact estimates may err on the side of overstating negative impacts, since local data in support of designation are more likely to be received from areas which the national data would tend to de-designate than from areas which they would newly designate or continue in designation.)

The impact is shown below in a series of tables describing different types of impact, each of which enables comparison of several different scenarios. In general, the first column of each table shows baseline numbers corresponding to actual HPSA and MUA designations on September 30, 1999; the second column shows the revised numbers that would result if these designations were updated by applying the criteria now in force to the national database used in this analysis; the third column shows the revised numbers that would result if the methods proposed in the 1998 NPRM (''NPRM1'') were applied; the fourth column shows the results of applying the criteria proposed herein (''NPRM2'' criteria) to geographic areas only; the fifth column shows the estimated results of applying NPRM2 low-income population group criteria to areas not meeting the geographic criteria; and the final column shows the estimated combined results of applying the ''NPRM2'' criteria first to geographic areas and then to low-income population groups in areas not meeting the geographic criteria.

The first three rows of Tables VI:1–9 provides the breakout of the various types of HPSA and/or MUA/P designations, whole county geographic, partial county geographic, and low income populations. This breakout allows an analysis of the impact of the new method on the different types of designations if desired. Row 4 then is total of these three rows and includes the aggregate numbers that were used in the impact analysis. Row 5 calculates the percentage of the original HPSAs/MUA–Ps that was designated under the various methodologies using updated data. For example, in Table VI:1, 949 of the original 2282 HPSAs tested would still be designated using the current method and updated data, which is a retention rate of 41.6% (Column 3/Column 2). Row 6 is the number of new designations that resulted from the various designation methodologies, i.e. areas that had not previously been designated that would become designated. Row 7 is the total of Rows 5 and 6, capturing the total number of areas, old and new, that would be designated under the various options. Row 8 calculates the percentage of designated areas as a percentage of the original baseline number, in order to measure the impact of the various methods in terms of degree of change in the number of areas that would be designated. For example, under the updated current method with new data, 1055 areas would be designated, which is 46.2% of the baseline number of 2282 (Column 3/Column 2). The same general process is followed for each of the columns in the Tables VI:1–V:7. Table VI:8 and VI:9 follow the same process for the combined HPSA/MUA–P designations to assess the impact of metropolitan/non-metropolitan/frontier areas and populations, with the percentages and the actual numbers now in the same row rather than separate rows. For example, in Table VI:8, 49% of the total designations were retained using the updated current method; Row 2, Column 2 divided by Row 2 Column 1 (2188/4447).

A. Impact on Number of HPSA Designations

As column 1 of table VI–1 shows, in the baseline year of 1999 there were 832 whole counties, 858 part-county geographic areas, and 592 low-income population groups designated as HPSAs in the United States, for a total of 2282 designations.

Since approximately one quarter of the HPSAs are updated each year, the 2282 designations considered valid in 1999 represent the results of case-by-case review of requests received over the 1996–99 period from State and local sources, and were based on a combination of national, State and local data as of 1998 or earlier. Column 2 shows the impact of simultaneously updating all these designations using the current HPSA criteria applied to the Impact Test Data Base assembled by HRSA and the UNC Sheps Center. [This data base included 1998 data for population, income and other census variables (using Claritas intercensus estimates); 1998 national primary care clinician data; and county-level vital statistics data for the five-year period 1994–98.] The results indicate that only 949 or 42% of the 2282 baseline areas would retain their designations if updated under the current criteria. However, 106 additional counties would be newly designated, so that the new total number of HPSAs would be 46% of the original total.

Column 3 of Table VI–1 shows the impact of applying the HPSA criteria proposed in ''NPRM1'', as published in 1998, to the 2282 baseline areas, using the same Impact Test Data Base of 1998 national data. The results indicate that only 652 or 29% of the baseline areas would retain their HPSA designation; 71 counties would be added, for a new total of 723 HPSAs, 32% of the baseline total. It is therefore quite understandable that the public comments received on NPRM1 expressed concern about potential loss

of many HPSA designations. At the same time, it is useful to realize (from comparing column 3 with column 2) that 80% of the HPSA designations that would be lost if the NPRM1 criteria were adopted would also be lost by simply simultaneously updating all areas using the HPSA criteria already in force.

By contrast, Column 4 of Table VI–1 shows that, when the NPRM2 Tier 1 geographic area criteria are applied, 1660 or 73% of the baseline HPSAs retain their HPSA designations. An additional 325 counties are newly designated, for a new total of 1985 HPSAs, 87% of the baseline total. While this result does not in itself demonstrate the superiority of the proposed NPRM2 method, it does indicate that application of the proposed method would not result in the loss of many existing HPSA designations, a major concern of commenters on the NPRM1 proposal.

TABLE VI–1.—IMPACT OF NPRM–1 AND NPRM–2 METHODS ON NUMBER OF HPSA DESIGNATIONS

Baseline HPSA status	Number of areas designated as of 1999 (baseline)	Number of areas designated by current criteria/ updated data	Number of areas designated by NPRM1 (meets IPCS & HPSA) (*)	Number of areas designated by NPRM2-geographic method	Number of population groups additionally designated using NPRM2 low income pop group method	Total number of areas and pop groups designated using NPRM2-geographic and low income pop group method
Whole County Geographic HPSA	832	372	243	694	114	808
Part County Geographic HPSA	858	473	332	681	139	820
Low Income Population HPSA	592	104	77	285	190	475
Subtotal: Number of Baseline HPSA Designations Retained	*2,282*	*949*	*652*	*1,660*	*443*	*2,103*
Percent of Baseline Designations Retained		*41.6%*	*28.6%*	*72.7%*	*19.4%*	*92.2%*
New Designations (1,197 Counties had no Baseline HPSA Designation)		106	71	325	452	777
Total Number of HPSA Designations	*2,282*	*1,055*	*723*	*1,985*	*895*	*2,880*
Total HPSAs as a Percent of Baseline		*46.2%*	*31.7%*	*87.0%*	*39.2%*	*126.2%*

*For NPRM1, 4 areas are not included because of missing data.

We also estimated the results of applying the NPRM2 Tier 1 low-income population group designation criteria to those baseline HPSA areas and counties that do not meet the NPRM2 geographic criteria. Column 5 shows the number of low-income population group HPSAs that would result; they include 253 in areas previously designated as geographic HPSAs, 190 previous HPSA population groups retained, and 452 potential new low-income population group HPSAs in counties not previously HPSA-designated.

Column 6 shows the combined result of applying NPRM2 Tier 1 geographic and low-income population group criteria: 2103 or 92% of areas with baseline HPSA designations would keep either a geographic or a low-income population group designation if the NPRM2 criteria were applied, while 777 additional geographical areas or low-income population groups could potentially be designated. While this last number may seem large, this may be related to the fact that all areas designated with the NPRM2 approach are both HPSAs and MUAs. Under the previous criteria there were considerably more MUAs than HPSAs. Therefore, in a new system with combined criteria, even if the total number of areas designated (as either MUAs or HPSAs) were to remain approximately the same as before, one could expect the number of HPSAs to increase.

B. Impact on Number of MUA/P Designations

As column 1 of table VI–2 shows, in the baseline year of 1999 there were 1411 whole counties, 1909 part-county geographic areas, and 138 low-income population groups designated as MUA/Ps in the United States, for a total of 3458 designations.

Unlike the case with HPSAs, regular reviews and updates to the list of MUA/Ps are not legislatively required, and no major review/update has occurred since 1982; rather, additions and deletions have been made upon request (requested deletions have been infrequent). Therefore, the 3458 MUA/P designations considered valid in 1999 include many not updated since 1982, plus the results of case-by-case review of requests received over the 1982–99 period from State and local sources. Column 2 shows the impact of simultaneously updating all these designations using the current MUA criteria applied to the Impact Test Data Base discussed above (assembled by HRSA and the UNC Sheps Center from 1998 data). The results are that only 1312 or 38% of these areas would retain their MUA designations. At the same time, 28 additional counties would be newly designated, so that the new total number of MUAs would be 39% of the baseline total. Thus, using the current methodology to update the MUA list would result in more change for MUAs than for HPSAs.

Column 3 of Table VI–2 shows the results of applying the MUA criteria proposed in ''NPRM1'', as published in 1998, to the same 3458 areas, using the same Impact Test Data Base of 1998 national data. Here 2405, or 70% of the baseline areas, would retain their MUA designation; 143 counties would be added, for a new total of 2548 MUAs, 74% of the baseline total. So the method proposed in NPRM1 would not have decreased existing MUA designations, in contrast to the effect it would have

had on HPSAs. And it would have performed significantly better than the option of updating using current criteria in terms of retention of MUA designations.

Column 4 of Table VI–2 shows that, when the NPRM2 Tier 1 geographic area criteria are applied, 2319 or 67% of the baseline MUAs retain their MUA designations. An additional 168 counties are newly designated, for a new total of 2487 MUAs, 72% of the original total.

TABLE VI–2.—IMPACT OF NPRM–1 AND NPRM–2 METHODS ON NUMBER OF MUA/P DESIGNATIONS

Baseline MUA/P status	Number of areas designated as of 1999 (baseline)	Number of areas designated by current criteria/updated data (*)	Number of areas designated by NPRM1 (meets IPCS) (**)	Number of areas deisgnated by NPRM2–geographic method	Estimated number of pop groups designated using NPRM2–low income pop group method	Total number of areas and pop groups designated using NPRM2–geographic and low income pop group method
Whole County Geographic MUA	1,411	499	1,067	1,031	319	1,350
Part County Geographic MUA	1,909	795	1,286	1,233	347	1,580
Low Income Population MUP	138	18	52	55	33	88
Subtotal: Number of Baseline MUA/P Designations Retained.	*3,458*	*1,312*	*2,405*	*2,319*	*699*	*3,018*
Percent of Baseline Designations Retained		*37.9%*	*69.5%*	*67.1%*	*20.2%*	*87.3%*
New Designations (674 Counties had no Baseline MUA/P Designation).		28	143	168	219	387
Total Number of MUA/P Designations	*3,458*	*1,340*	*2,548*	*2,487*	*918*	*3,405*
Total MUA/Ps as a Percent of Baseline		*38.8%*	*73.7%*	*71.9%*	*26.5%*	*98.5%*

* For Current Criteria, Updated Data, 327 areas are not included because of missing data.

We also estimated the results of applying the NPRM2 Tier 1 low-income population group designation criteria to those baseline MUAs and other counties that do not meet the NPRM2 geographic criteria. Column 5 of Table VI–2 shows the number of low-income MUPs that would result; they include 666 in areas previously designated as geographic MUAs, 33 previous low-income MUPs retained, and 219 potential new low-income MUPs in counties not previously MUA/P-designated.

Column 6 shows the combined result of applying NPRM2 Tier 1 geographic and low-income population group criteria: 3018 or 87% of areas with baseline MUA/P designations would keep either a geographic or a low-income population group designation if the NPRM2 criteria were applied, while 387 additional geographical areas or low-income population groups could potentially be designated, for a total of 3405 MUA/P designations, 98% of the baseline number.

C. Impact on Number of Unduplicated HPSA/MUP Designations

Areas and population groups designated under the criteria proposed herein would be considered both MUA/Ps and HPSAs. Therefore, it is important to examine not only the impact on HPSA and MUA/P designations separately, but also the combined impact on unduplicated HPSA and MUA/P designations. This is shown in Table VI–3. As column 1 shows, 1610 whole counties were designated either as MUAs or HPSAs or both in 1999; 2350 additional part-county areas were geographically designated as MUAs and/or as HPSAs; and 487 low-income population groups in other areas were designated as MUPs and/or population group HPSAs, for a total of 4447 unduplicated baseline designations (as compared with the baseline HPSA total of 2282 and the baseline MUA/P total of 3458). We have characterized this combined group of basis areas as the ''any designation'' layer of areas.

Column 2 of Table VI–3 shows the impact on unduplicated number of designations of updating using the current HPSA/MUA/P criteria (against the 1998 database described above). 2170 or 48.8% of the baseline areas would retain designation; 18 additional counties would achieve designation, so that the new total of 2188 areas would be 49.2% of the baseline total.

Column 3 shows the impact of applying the previously-published NPRM1 criteria to the unduplicated baseline areas. Here 2994 or 67% of the baseline areas would retain their designation; with 42 new designations, a total of 3036 unduplicated designations would result, or 68% of the baseline number. This is compared to the 50% loss associated with updating under current criteria, but application of the NPRM1 criteria would still have decreased (nearly ⅓) of unduplicated designations.

Column 4 shows the impact of applying the proposed NPRM2 geographic criteria to the unduplicated baseline areas. Here a total of 2962 areas are geographically designated, or 67% of the baseline areas, roughly the same as the NPRM1 impact. However, when the estimated NPRM2 low-income population group adjustment is applied and added, we get the considerably more favorable combined result shown in Column 5: A total of 3882 designations (or 87% of the unduplicated baseline) are retained by the NPRM2 method, while 168 new designations are added, for a total of 4050 designations or 91% of the baseline.

TABLE VI–3.—IMPACT ON NUMBER OF COMBINED HPSA/MUA DESIGNATIONS

Baseline HPSA and MUA/P status	Number of areas designated				
	As of 1999 (baseline)	By curent criteria/updated data	By NPRM1 (meets IPCS threshold)	By NPRM2 geographic method	Total using NPRM2 geographic and low income adjustment (2 step) method
Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (Old):					
Whole County Geog HPSA or MUA	1,610	734	1,177	1,163	1,536
Part County Geog HPSA or MUA	2,350	1,351	1,607	1,571	2,003
Low Income Population HPSA or MUP	487	85	210	177	343
Subtotal: Areas Designated (of 1999 Designated Areas)	4,447	2,170 *48.8%*	2,994 *67.3%*	2,911 *65.5%*	3,882 *87.3%*
New Designations (not Designated 1999)		18	42	51	168
Total: Areas Designated (of 1999 Designated and Undesignated Areas)	4,447	2,188 *49.2%*	3,036 *68.3%*	2,962 *66.6%*	4,050 *91.1%*

(Note: Tables VI–1 and VI–2 show that 777 new HPSA designations and 387 new MUA/P designations result when the proposed NPRM2 criteria are applied separately to baseline HPSAs plus other counties and to baseline MUAs plus other counties. By contrast, when the unduplicated set of baseline areas are used in Table VI–3, we find only 168 new designations that were not either HPSAs or MUAs previously. Also, while Tables 1 and 2 show the total numbers of Tier 1 HPSAs and MUA/Ps under NPRM2 to be 126% and 98% of their baselines, respectively, Table 3 shows that the total unduplicated designations under NPRM2 Tier 1 are only 91% of the unduplicated baseline. From here on, impact analysis results are displayed in terms of the unduplicated baseline areas.)

D. Impact on Population of all Designated HPSAs and/or MUPs

While the number and percent of designations retained and the new total number of designations under alternative methods are important measures of the impact of a change in criteria, these measures can also be misleading, since all areas are not equal; different areas have different populations, different levels of need, and different numbers of safety net providers. Using 1998 Claritas population estimates, the total population of all 1999-designated (baseline) HPSAs was 59.1 million, while the total population of baseline MUA/Ps was 72.1 million; the unduplicated total population of baseline areas designated as HPSAs and/or MUA/Ps was 95.3 million.

Table VI–4 shows the impact of the various alternatives on this unduplicated total designated population. Updating using the current criteria against the 1998 Impact Test Database would lower the total designated population to 32.7 million, or 34% of the baseline. Use of the NPRM2 geographic criteria would result in a total designated population of 53.0 million, or 56% of the baseline. Finally, use of the NPRM2 method would result in a total designated population of 83.1 million, or 87% of the baseline. (This is actually quite close to the percentage expressed in number of designations, which was 91%.)

TABLE VI–4.—IMPACT ON UNDUPLICATED POPULATION OF HPSAS AND MUA/PS

Baseline HPSA and MUA/P Status	Population in areas				
	As of 1999 (Baseline)	By current criteria/updated data	By NPRM2 geographic method [A]	By NPRM2 low income adjustment (2 step) method [B](*)	Total using NPRM2 geographic and low income adjustment (2 step) method [A+B]
Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (Old):					
Whole County Geog HPSA or MUA	38,400,153	12,044,723	23,080,444	11,501,134	34,581,578
Part County Geog HPSA or MUA	37,747,979	17,986,210	24,044,227	8,308,592	32,352,819
Low Income Population HPSA or MUP (*)	19,132,742	2,199,545	4,692,078	6,352,471	11,044,549
Subtotal: Population in Areas Designated (of 1999 Designated Areas)	95,280,874	32,230,478	51,816,749	26,162,197	77,978,946
Subtotal: Share of Population in Areas Designated in 1999		33.8%	54.4%	27.5%	81.8%
Not Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (New):					

TABLE VI–4.—IMPACT ON UNDUPLICATED POPULATION OF HPSAS AND MUA/PS—Continued

Baseline HPSA and MUA/P Status	Population in areas				
	As of 1999 (Baseline)	By current criteria/updated data	By NPRM2 geographic method [A]	By NPRM2 low income adjustment (2 step) method [B](*)	Total using NPRM2 geographic and low income adjustment (2 step) method [A+B]
New Designations [28,490,624] Population in Areas without Baseline Designation)		481,198	1,111,149	4,057,976	5,169,125
Total: Population Areas Designated (of 1999 Designated and Undesignated Areas)	95,280,874	32,711,676	52,927,898	30,220,173	83,148,071
Total: Share of Population in Areas Designated in 1999		34.3%	55.5%	31.7%	87.3%

*Though these designations are associated with Low Income Population, the population counts provided here are for all residents of the area [Total Population].

The results in Table VI–4 suggest that use of the NPRM2 method will better target designations—both the number and population of all designated areas will decrease by about 10%. At the same time, the NPRM2 method should result in a much smoother transition from current designation levels than would either updating using current criteria (which would significantly decrease MUAs) or updating using NPRM1 (which would significantly decrease HPSAs).

E. Impact on Number of CHCs Covered by Designations

Table VI–5 shows, for those CHC sites identified as located in areas which were designated in the baseline year, the percentage that retain their designations under the various scenarios. Under the proposed method, 86% would be in areas that retain designation (either as a geographic area or as a low income population group-see fourth line of table, last column). By contrast, the NPRM1 method would have retained only 76%, while updating the designations under current criteria would have retained only 43%.

TABLE VI–5.—IMPACT ON NUMBER OF CHCS COVERED BY DESIGNATIONS

Baseline HPSA and MUA/P Status	Number of CHCs in areas				
	As of 1999 (Baseline)	By current criteria/updated data	By NPRM1 (meets IPCS threshold)	By NPRM2 geographic method	Total using NPRM2 geographic and low income adjustment (2 step) method
Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (Old):					
Whole County Geog HPSA or MUA	618	252	474	456	583
Part County Geog HPSA or MUA	741	354	583	453	629
Low Income Population HPSA or MUP (*)	122	31	61	51	93
Subtotal: CHCs in Designated Areas (% of 1999 CHCs)	1,481	637	1,118	960	1,305
		43%	*75.5%*	*64.8%*	*88.1%*
Not Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (New) New Designations (43 CHCs without Baseline Designation)		2	7	4	10
Total: CHCs in Designated Areas (% of 1999 CHCs)	1,481	639	1,125	964	1,315
		43.1	*75.9%*	*62.1*	*88.8*

*The number of CHCs is based on the number of FQHC, Community Health Center sites which offer a full range of primary care services and where the designation is based on area characteristics or low income. Most part-time, special population and satellite clinics are excluded.

F. Impact on Number of NHSC Sites Covered by Designations

Table VI–6 shows, for those NHSC sites identified as located in areas which were designated in the baseline year, the percentage that retain their designations under the various scenarios. Under the proposed method, 86% would be in areas that retain designation (either as a geographic area or as a low income population group—see fifth line of table, last column). By contrast, updating the designations using current criteria would have retained only 34%.

TABLE VI–6.—IMPACT ON NUMBER OF NHSC SITES COVERED BY DESIGNATIONS

Baseline HPSA and MUA/P status	Number of areas with NHSCs designation				
	As of 1999 (Baseline)	By current criteria/updated data	By NPRM2 geographic method [A]	By NPRM2 low income adjustment (2 step) method [B]	Total using NPRM2 geographic and low income adjustment (2 step) method [A+B]
Designated as Geog or Low Income:					
Whole County Geog HPSA or MUA	340	123	218	97	315
Population HPSA or MUA/P as of 1999 (Old):					
Part County Geog HPSA or MUA	414	172	245	119	364
Low Income Population HPSA or MUA/P	178	19	52	72	124
Subtotal: NHSC Areas Designated (of 1999 Designated Areas)	932	314	515	288	803
Subtotal: Share of NHSC Areas Designated in 1999		33.7%	55.3%	30.9%	86.2%
Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (New):					
New Designations (15 Areas with NHSCs without Baseline Designation)		0	0	4	4
Total: NHSC Areas Designated (of 1999 Designated and Undesignated Areas)	932	314	515	292	807
Total: Share of NHSC in Areas Designated in 1999		33.7%	55.3%	31.3%	86.6%

G. Impact on Number of RHCs Covered by Designations

Table VI–7 shows, for those RHC sites identified as located in areas which were designated in the baseline year, the percentage that retain their designations under the various scenarios. Under the proposed method, 94% of RHCS in currently designated areas would be in areas that retain designation (either as a geographic area or as a low income population group—see fifth line of table, last column). An additional 94 RHCs that were not in designated areas at the time of testing would be in areas designated under the new methodology, resulting in 97.5% of RHCs being located in designated areas. By contrast, updating under current criteria would have retained 46%.

TABLE VI–7.—IMPACT ON NUMBER OF RHCS COVERED BY DESIGNATIONS

Baseline HPSA and MUA/P status	Number of RHCs in areas designated				
	As of 1999 (Baseline)	By current criteria/updated data	By NPRM2 geographic method [A]	By NPRM2 low income adjustment (2 step) method [B]	Total Using NPRM2 geographic and low income adjustment (2 step) method [A+B]
Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (Old):					
Whole County Geog HPSA or MUA	2,173	946	1,503	569	2,072
Part County Geog HPSA or MUA	544	336	393	127	520
Low Income Population HPSA or MUA/P	125	24	43	42	85
Subtotal: RHCs Designated (of 1999 Designated Areas)	2,842	1,306	1,939	738	2,677
Subtotal: Share of RHCs Designated in 1999		46.0%	68.2%	26.0%	94.2%
Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (New):					
New Designations (120 RHCs in Areas without Baseline Designation)		11	28	66	94
Total: RHCs Designated (of 1999 Designated and Undesignated Areas)	2,842	1,317	1,967	804	2,771
Total: Share of RHCs Designated in 1999		46.3%	69.2%	28.3%	97.5%

H. Impact on Distribution of Designations by Metropolitan/Non-Metropolitan and Frontier Status

Table VI–8 enables comparison of the impact on number of designated areas in metropolitan, non-metropolitan, and frontier areas. (Here metropolitan areas are those so designated by the Office of Management and Budget; non-metropolitan areas are all other areas. Frontier areas are generally defined as the subset of non-metropolitan areas with population densities less than 7 persons per square mile, but for the purpose of these impact tests a file of frontier areas was used that was provided by the Frontier Education Center and involved a more expansive definition of frontier areas that included a formula based on population density and isolation [time and distance from a market area as well as other factors]). Table VI–8 (last column) shows that, while 91% of all baseline designations are retained under the proposed method, 82% of those in metropolitan areas, 98% of those in non-metropolitan areas, and 99% of those in frontier areas are retained. Therefore, non-metropolitan and frontier areas are not more negatively impacted than metropolitan areas (contrary to the impression many commentors seemed to have of the NPRM1 method).

TABLE VI–8.—IMPACT ON DISTRIBUTION OF DESIGNATIONS BY MET/NON-MET/FRONTIER

	Baseline	Current criteria updated	NPRM1	NPRM2 Geog	NPRM2 Geog + Low-income pop
Total No. of Designations	4,447	2,188 (49%)	3,036 (68%)	2,962 (67%)	4,050 (91%)
Metropolitan	1,880	861 (46%)	1,223 (65%)	1,112 (59%)	1,532 (82%)
Non-Metro	2,567	1,327 (52%)	1,813 (71%)	1,850 (72%)	2,518 (98%)
Frontier	1,026	544 (53%)	800 (78%)	751 (73%)	1,014 (99%)

I. Impact on Distribution of Population of Underserved Area and Underserved Populations by Metropolitan/Non-Metropolitan and Frontier Status

Table VI–9 enables comparison of the impact on the population of underserved areas and underserved populations in metropolitan, non-metropolitan, and frontier areas. Table VI–9 (last column) shows that, while the total designated population under the proposed method would be 87% of the baseline designated population, the metropolitan component of this NPRM2 designated population is 81% of the baseline metropolitan underserved, the non-metropolitan component is 99% of the baseline non-metropolitan underserved, and the frontier component is 102% of the baseline frontier underserved. Therefore, the designated population of non-metropolitan and frontier areas would not decrease. The metropolitan population identified as underserved would appear to decrease, however. We expect this represents better targeting of the metropolitan underserved under the proposed method: It may also represent the fact that use of a national physician database together with gross estimates of the percent of urban practices devoted to low-income and uninsured populations leads to overestimates of the number of FTE clinicians and underestimates of the number of designations and the underserved population in metropolitan areas. This suggests that case-by-case activity will continue to be necessary in reviewing some urban designations, while many non-metropolitan designations will be able to be processed using national data together with the new method.

TABLE VI–9.—IMPACT ON POPULATION OF UNDERSERVED AREAS BY MET/NON-MET/FRONTIER

	Baseline	Current criteria updated	NPRM2 Geog	NPRM2 Geog + Low-income pop
Total Underserved	95,280,874	32,711,676 (34%)	52,927,898 (56%)	83,148,071 (87%)
Metropolitan Underserved	63,791,345	21,044,647 (33%)	31,951,255 (50%)	51,804,251 (81%)
Non-Metro Underserved	31,489,529	11,667,029 (37%)	20,976,643 (67%)	31,343,820 (99%)
Frontier Underserved	8,328,049	3,396,268 (41%)	5,784,509 (70%)	8,528,643 (102%)

J. Impact of Practitioner ''Back-outs'' on Number of Designations and Safety-Net Providers

The tables above represent the impacts when all clinicians are counted, i.e. the ''Tier 1'' designations. The tables below describe the impact of subtracting federally placed, obligated or funded clinicians from the practitioner counts, i.e. the changes that occur when ''Tier 2'' designations are included. For example, Table VI–10 shows the effect on number of designations. Column 1 shows the number of baseline designations; column 2 shows the number of Tier 1 designations under the proposed method. Column 3 shows the new total of designations if NHSC and SLRP clinicians are subtracted. Column 4 shows the revised total if physicians with J–1 visa return-home waivers who are performing obligated service are also subtracted. Finally, column 5 shows the total number of designations when any other CHC-Based clinicians are also subtracted.

TABLE VI–10.—IMPACT OF PRACTITIONER "BACK-OUTS" ON TOTAL NUMBER OF HPSA OR MUA/P AREAS DESIGNATED

Baseline HPSA and MUA/P status	Number of areas designated				
	As of 1999 (baseline)	By NPRM2 geographic and 2 step low income method Tier 1 (all primary care providers)	By NPRM2 geographic and 2 step low income method Tier 2–1 (Tier 1 less NHSC and SLRP providers)	By NPRM2 geographic and 2 step low income method Tier 2–2 (Tier 1 less NHSC, SLRP, and J–1 providers)	By NPRM2 geographic and 2 step low income method Tier 2–3 (Tier 1 less NHSC, SLRP, J–1, and any designation)
Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (Old):					
Whole County Geog HPSA or MUA	1,610	1,536	1,546	1,551	1,553
Part County Geog HPSA or MUA	2,350	2,003	2,010	2,015	2,038
Low Income Population HPSA or MUP	487	343	346	350	356
Subtotal: Areas Designated (of 1999 Designated Areas)	4,447	3,882	3,902	3,916	3,947
Subtotal: Share of Areas Designated in 1999	.....	87.3%	87.7%	88.1%	88.8%
Designated as Geog or Low Income Population HPSA or MUA/P as of 1999 (New):					
New Designations (376 Areas Designated as HPSA or MUA without Baseline Designation)	.....	168	168	168	172
Total: Areas Designated (of 1999 Designated and Undesignated Areas)	4,447	4,050	4,070	4,084	4,119
Total: Share of Areas Designated in 1999	.....	91.1%	91.5%	91.8%	92.6%

As can be seen, the number of additional designations resulting from these practitioner back-outs is quite small. However, HRSA considered that there could be a significant impact on some particular safety-net projects, i.e. certain CHCs, NHSC sites, and RHCs.

Table VI–11 summarizes the impact on CHCs, NHSC sites, and RHCs. It indicates that 49 additional CHCs, 32 additional NHSC sites, and 43 additional RHCs are in areas which would receive Tier 2 designation (change from Column 2 to Column 5). While this is not a large number, it clearly would be important for the affected sites. HRSA therefore concluded that the Tier 2 designations (with all three types of backouts) should be implemented.

TABLE VI–11.—IMPACT OF PRACTITIONER BACK-OUTS ON NUMBERS OF CHCS, NHSC SITES, AND RHCS COVERED BY DESIGNATIONS

Type of safety-net provider	Number in baseline designated areas	Number in NPRM2-designated tier 1 areas (All primary care clinicians counted)	Number in NPRM2-designated tier 1/tier 2–1 areas (NHSC and SLRP clinicians subtracted)	Number in NPRM2-designated tier 1/tier 2–2 areas (NHSC, SLRP and J–1 clinicians subtracted)	Number in NPRM2-designated tier 1/tier 2–3 areas (NHSC, SLRP, J–1, and other section 330 funded clinicians subtracted)
CHCs	1,481	1,315	1,322	1,328	1,364
(% of baseline CHCs)	.....	(88.8%)	(89.3%)	(89.7%)	(92.1%)
NHSC sites	932	807	825	828	839
(% of baseline NHSC sites)	.....	(86.6%)	(88.5%)	(88.8%)	(90.0%)
RHCs	2,842	2,771	2,790	2,794	2,814
(% of baseline RHCs)	.....	(97.5%)	(98.2%)	(98.3%)	(99.0%)

In conclusion, it should be stated that it is impossible to predict the exact final impact on specific communities and States because of the iterative process built into the system. As described above, State and local officials will have the opportunity to examine the data used to develop these first approximations during the actual designation process, and to correct inaccurate provider and other data. In addition, they will have the opportunity to reconfigure service areas so as to more closely identify the boundaries of areas where shortages now exist, which may have changed since some of these service areas were constructed (particularly the MUAs). We believe this is a major strength of the proposal, since States and communities know best their service areas and practitioner supplies. At the same time, it makes it difficult to predict precisely the impact of the new method at the local level, since the data

used will be altered by State and local input.

VII. Economic Impact

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding unnecessary burden. Regulations which are found to be ''significant'' because of their cost, adverse effects on the economy, inconsistency with other agency actions, budgetary impact, or raising of novel legal or policy issues require special analysis. The Department has determined that this rule will not have an annual effect on the economy of $100 million or more. However, because this rule raises novel policy issues, it does meet the definition of a ''significant'' rule under Executive Order 12866.

The Regulatory Flexibility Act requires that agencies analyze regulatory proposals to determine whether they create a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in the Regulatory Flexibility Act as ''having the same meaning as the terms 'small business,' 'small organization,' and 'small governmental jurisdiction' ''; ''Small organizations'' are defined in the Regulatory Flexibility Act as not-for-profit enterprises which are independently owned and operated and not dominant in their field.

The small organizations most relevant to this regulation would be Health Center grantees. The impact analyses discussed above suggest that very few health center service areas would lose MUA/P designation under the proposed criteria. In addition, because of the proposed new safety net facility type of designation, any negatively affected health center will be able to submit a request for this alternate type of designation. Moreover, the ''automatic'' designation of all FQHCs as HPSAs for six years under the Safety Net Amendments of 2002 will allow additional time for any transition to unfunded status that may prove to be necessary for some health centers.

With regard to small businesses, while the designation process may negatively affect some small profit-making health care-related businesses, it is unlikely that it could have a significant economic impact, defined as five percent or more of total revenues on three percent or more of all such small businesses. Physician practices can obtain a 10 percent Medicare Incentive Payment bonus for those services delivered in geographic HPSAs; however, this would be unlikely to amount to five percent of the total revenues of a practice operated as a small business.

Private RHCs could be considered small businesses; non-profit RHCs could be considered small organizations. RHCs already certified based in part on an MUA or HPSA designation have not been adversely affected by loss of such designations in the past, since the legislative authority for them had a ''grandfather'' clause; once certified, the RHC certification could not be withdrawn based only on loss of designation. However, the Balanced Budget Act of 1997 provided that, effective January 1, 1999, an RHC in an area that has lost designation or was designated over 3 years ago is subject to loss of its RHC certification, unless the Secretary determines that the RHC is essential to the delivery of primary care services in its area. The impact analysis shows only 2% of the non-metro designations will be lost under the proposed new method, so the likely impact is minimal. Therefore, implementation of these regulations will not automatically decertify any RHCs.

''Small governmental jurisdictions'' are defined by the Regulatory Flexibility Act to include governments of those cities, counties, towns, townships, villages, or districts with a population of less than 50,000. Typically, one can expect that such jurisdictions will be found in non-metropolitan areas. Our impact analysis indicated that only 2 percent of all designations in non-metropolitan areas are likely to lose a designation (see Table VI–8 above). This suggests that a substantial number of small government jurisdictions will not be affected. Furthermore, it is unlikely that the economic impact on any such affected jurisdictions would be significant, *i.e.* that they would lose more than 5 percent of their federal funding, as discussed in more detail below.

The impact on particular jurisdictions of loss of designation can take one or more of three forms: Loss of grant funding for primary care services, loss of a source of clinicians to provide primary care services, or loss of a more favorable level of Medicaid and/or Medicare reimbursement. The first of these types of impact would occur only in the case of a Health Center which has lost its area and/or population designation, and does not qualify for designation as a safety net site. Typically, grant funding forms approximately 25–30 percent of the income to a CHC; it is possible that such a health center would be able to continue in operation without this revenue. Moreover, dedesignation could indicate that not only provider availability but also the income of the area's population had increased. As a result, the percentage impact on the economy of the area involved would likely be relatively low.

The second of these types of impact corresponds to an area which, due to loss of its HPSA designation, is no longer eligible for NHSC clinicians, once the tour of duty of any NHSC personnel already placed there is completed. If such an area has recently been dedesignated, logically there must have been an increase in the number of primary care providers in the area and/or a decreased population and/or improved demographics, so that loss of NHSC clinicians will be unlikely to have a major economic effect on the area. (Furthermore, the ''automatic'' HPSA designation of FQHCs and RHCs should mitigate any adverse effects here during the next several years.)

The third type of impact applies in the case of FQHCs and/or RHCs which lose eligibility for special reimbursement methods, and private physicians in former geographic HPSAs which lose the 10 percent Medicare bonus. None of these entities would actually cease receiving Medicare or Medicaid reimbursement; they simply would receive a lower level of reimbursement. In the latter case, it is a loss of 10 percent, but it is unlikely that it would amount to 5 percent of the physician's total revenue. In the FQHC/RHC case, there could be a 20–30 percent decrease in reimbursement to the provider in question, but again this would not necessarily be a major economic loss to the county or other jurisdiction as a whole.

It should also be noted that, to the extent that the proposed regulation ultimately results in some areas losing designation while others gain designation, and some areas therefore losing program benefits which go to designated areas while others gain such benefits, the total benefits available in a particular fiscal year will not decrease but will have been better targeted to the neediest areas, because the criteria will have been improved and will have been applied to more current data.

The Department nevertheless requests comments on whether there are any aspects of this proposed rule which can be improved to make the designation process proposed more effective, more equitable, or less costly.

VII. Information Collection Requirements Under Paperwork Reduction Act of 1995

Sections 5.3 and 5.5 of the proposed rule contain information collection

requirements as defined under the Paperwork Reduction Act of 1995 and implementing regulations. As required, the Department of Health and Human Services is submitting a request for approval of these information collection provisions to OMB for review. These collection provisions are summarized below, together with a brief description of the need for the information and its proposed use, and an estimate of the burden that will result.

Title: Information for use in designation of MUA/Ps and HPSAs.

Summary of Collection: These regulations revise existing criteria and processes used for designation of Medically Underserved Areas/Populations (MUA/P) and Health Professional Shortage Areas (HPSA). As discussed above, service to an area or population group with such a designation is one requirement for entities to obtain Federal assistance from one or more of a number of programs, including the National Health Service Corps and the Community and Migrant Health Center Program.

In order to initially obtain such a designation, a community, individual or State agency or organization must request the designation in writing. Requests must include data showing that the area, population group or facility meets the criteria for designation, although these data need not necessarily be collected by the applicant, but may be based on data obtained from a State entity or data available from the Secretary. If the request is made by a community or individual, the State entities identified in the regulation are given an opportunity to review it, which implies maintenance by these State entities of some record keeping on designation requests previously made or commented upon by the State. These requirements apply under both current rules and the proposed rule.

Once a designation based on the proposed criteria has been made, it must be updated periodically (at least once every three years) or it will be removed from the list of designations. Although in the past this requirement applied only to HPSA designations, the proposed rule would extend the regular periodic update requirement to MUA/P designations (in response to concerns raised by the GAO and Congressional committees, among others). The update process involves the Secretary each year informing State (and/or community) entities as to which of their designations require updates, and providing these entities with the most current data available to the Secretary for the areas, population groups and facilities involved, with respect to the data elements used in designation. The State entities are then asked to verify whether the designations are still valid, using the data furnished by the Secretary from national sources together with any additional, more current or otherwise more accurate data available to the State entity (in consultation with the communities involved, as necessary). In the past, this has generally meant that the State (or community) entities have needed to verify primary care physician counts in most of the areas involved, especially subcounty areas, since only county-level physician data have typically been available from national sources. National population data have been largely limited to decennial census data and official Census Bureau intercensus county-level updates, so that State population estimates were sometimes necessary; other relevant data have generally been available from national sources.

Under the proposed new process, the data furnished by the Secretary will include provider data and population estimates for subcounty areas as well as counties, in an easily accessible database, and these data from national sources (including intercensus demographic and population projections) may be used without further collection and analysis, if acceptable to the State and community involved. This should minimize the burden on States and communities, except where the Secretary's data suggest withdrawal of a designation, in which cases the State or community will need to obtain local data to support continued designation. In such cases, the inclusion of non-physician providers under the proposed new rules will have a higher burden on those States or communities which wish to challenge provider data furnished by the Secretary.

Need for the information. The information involved is needed in order to determine whether the areas, populations and facilities involved satisfy the criteria for designation and, therefore, are eligible for programs for which these designations are a prerequisite. While furnishing such information is purely voluntary, failure to provide it can prevent some needy communities from becoming eligible for certain programs. The Secretary will make a proactive effort to identify such communities using national data, but feedback from State entities and others with appropriate data is vital to ensuring that the designation/need determination process is accurate and current.

Likely respondents. The entities that generally submit this designation-related information to DHHS are the State Primary Care Offices (normally within State Health Departments) or the State Primary Care Associations (non-profit associations of health centers and other organizations rendering primary care). The total burden placed on these entities will be determined by the number of applications they submit, review or update each year, and, therefore, will vary from State to State. Updates of all designated areas will not be required immediately when the new method is initiated; State entities will be given the opportunity to spread out updates of previously designated areas over a 3-year period following implementation of the proposed regulation.

Burden estimate. The overall public reporting and record keeping burden for this collection of information is estimated to be minimal under the new method. This is primarily because, while the new method will require some data collection from the same sources utilized in the previous MUA/P and HPSA designation procedures, there is no need to submit separate requests for the two types of designation and allows the use of national data where acceptable to the State and community. We also plan to allow electronic submission of data.

The burden for compiling a request for new designation (including supporting data) or for update of an existing designation, under the existing system, was estimated by consulting with State entities who prepare such requests/updates about the amount of time required for the various aspects of request preparation, varying these estimates for requests with several different levels of difficulty, and then factoring in the approximate frequency of that type of request. Similar estimates for the new system were then made, revising the contributing factors to account for those aspects that would require more or less effort under the new approach. These estimates also assume that some applications are State-prepared, while others involve both an applicant and a State consultation or review; the estimates include both parties' time where two parties are involved. Under the new method, States and communities may use data provided by the Secretary; as mentioned above; however, some may wish to provide their own data for primary care physicians, while others may wish to provide data for both primary care physicians and for the nonphysician primary medical care providers which are included in the new designation

criteria and system (Nurse Practitioners, Physician Assistants, and Certified Nurse Midwives). Use of State and/or community data will be more likely in those cases where the national data suggest dedesignation. The estimates below include consideration of the extent to which such local data collection will likely be necessary.

Designation type	Number of respondents	Number of expected responses	Hours per response	Total hours
MUA/P/HPSA Metro Area	54	391	27.4	10,713
MUP/HPSA Non-Metro Area	*54	909	10.9	9,908
Facility Designations	25	70	2.6	182
Total	79	1,370	.....	20,803
Mean	.....	.....	15.2	.....

*The Non-Metro applications are completed by the same respondents who complete Metro Area designation requests. To prevent double-counting of respondents, these 54 are added only once; therefore, 79 is shown as the total.

Public comments on information collection requirements: Comments by the public on this proposed collection of information are solicited and will be considered in (1) evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical use; (2) evaluating the accuracy of the Department's estimate of the burden 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 collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Address for comments on information collection requirements: Any public comments specifically regarding these information collection requirements should be submitted to: Fax Number—202–395–6974, or *OIRA_submission@omb.eop.gov*, Attn: Desk Officer for HRSA. Comments on the information collection requirements will be accepted by OMB throughout the 60-day public comment period allowed for the proposed rules, but will be most useful to OMB if received during the first 30 days, since OMB must either approve the collection requirement or file public comments on it by the end of the 60-day period.

Appendix A.—References

Works Cited

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Ricketts TC, Goldsmith LJ, Holmes GM, Randolph R, Lee R, Taylor DH, Osterman J. Designating Places and Populations as Medically Underserved: A Proposal for a New Approach. *Journal of Health Care for the Poor and Underserved*. 2007; 18: 567–589.

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Appendix B.—A Proposal for a Method To Designate Communities as Underserved

Technical Report on the Derivation of Weights

This Appendix is intended to provide more technical details about the proposed methodology and how it was developed. The principal authors of this document are, alphabetically: Laurie Goldsmith, Mark Holmes, Jan Ostermann, and Tom Ricketts.

The General Approach

The overall approach for deriving an empirical, data driven system to identify underserved areas and populations is to estimate the effect of demographic factors on the population-to-practitioner ratio, using a sample of counties as proxies for a health care market. These effects are then translated to a score which is added to an adjusted ratio for a total ''need'' measure. Thus, the implementation is similar to the current IPCS or MUA method in that it creates a ''score'' or ''index'' of underservice, however, the proposed system's score is based on an adjusted ratio that is meant to represent an ''effective'' or ''apparent'' population and its primary health care needs.

There are eight steps to the project, which we divide for expository purposes into two distinct ''Tasks''. Please note that the specific steps described earlier in the preamble to this rule may not match up to the steps described below (for example, ''step 4'' in the preamble matches up with ''steps 4–5'' and ''step 7'' in this appendix).

Task One: Calculate the Weights That Will Be Used To Adjust Ratios (''Analysis'')

This is the analytical portion of the project in which we explore the degree to which observable demographic characteristics tend to be associated with population to provider ratios. The specific steps in this task include:

1. Create an age-sex adjusted population.
2. Calculate the base population-provider ratio for regression to determine weights for need variables.
3. Select study sample primary care service area proxies.
4. Create factor scores to control for interactions of variables.
5. Run regression models to create weights for community variables.

Task Two: Calculate the Scores Based on These Factors (''Computation'')

This is the portion of the process in which scores are assigned to geographic areas based on the weights calculated in Task One.

6. Calculate the base population-practitioner ratio for designation determination.
7. Calculate the scores for each area based on the values for each variable for each area and add to the ratio.
8. Step 8: Compare the ratio to a designation threshold ratio.

We describe each of these steps in detail in the following sections.

Task 1: Analysis Steps

Step 1: Create an Age-Sex Adjusted Population

Using estimated visit rates from individual-level surveys, we weight the population to create a ''base population.'' In this manner, populations can be compared across areas. The use of these data for this adjustment are discussed in detail in reports and background papers for the proposal including the report that estimates the national impact of the NPRM–2 proposal, ''National Impact Analysis of a Proposed Method to Designate Communities as Underserved'' dated September 7, 2001; the background paper, ''Designating Underserved Populations. A Proposal For An Integrated System Of Identifying Communities With Multiple Access Challenges,'' which is in draft form; and the ''Executive Summary'' of the ''Designating * * *'' paper, which has been circulated in draft form to the Bureau of Primary Health Care.

The weights are summarized in Table 1.

TABLE 1.—VISIT WEIGHTS FOR AGE-SEX ADJUSTMENT

	0–4	5–17	18–44	45–64	65–74	75 and over
Female	4.046	2.256	5.007	5.480	6.710	8.160
Male	5.164	2.499	2.867	4.410	6.052	8.056

These are the original weights using 1996 data.

The weighted sum of these populations is calculated as 4.046 * (# Females 0–4) + 2.256 * (# Females 5–17) +. . .+ 8.056 *(# Males 75 and over) and equals an age-sex adjusted number of visits for a particular population. Dividing this number of visits by the mean visit rate (3.741) creates a ''base population''. Areas with equal base populations (and equal demographics) have an equal need for primary care visits per year. This adjustment allows us to compare, say, the population-based visit differentials between an area with a high concentration of elderly (with a higher need for visits) and an area with a high population of middle aged individuals (with a lower need for visits). The visit rates were obtained from the Medical Expenditure Panel Survey (1996) and were calculated for non-poor, white, non-Hispanic individuals. Employment status, which was included in the MEPS survey and was a significant correlate of use of service, was also intercorrelated with the other variables and was not included in the final visit calculation.

Step 2: Calculate the Base Population-Provider Ratio for Regression To Determine Weights for Need Variables

With the base population in hand, we calculate the population-provider ratio to use in the regression to determine factor weights. When applying the formula for the initial estimation of weights, the number of practitioners is calculated as:

Providers = physicians – (J1_physicians + MHSC_physicians + SLRP_physicians) + .5* [midlevels – (NHSC_midlevels + SLRP_midlevels)] + .1* [residents – (NHSC_residents + SLRP_residents)]

where all practitioners are measured in FTE units and the practitioner total includes NPs, PAs and CNMs weighted according to agency guidelines. The number of practitioners used in the regression to determine weights for the need variables represents only those practitioners that are considered to be the ''private'' supply. That is, the practitioners who would choose to practice in the community without federal support or incentives to practice in state- or federally-operated facilities. As such, government practitioners (whether federal or state) are not counted here. Community Health Center practitioners who are not federal employees, however, are counted since many of these are not ''placed'' into communities but are practitioners already located in the area that are ''reclassified'' as CHC practitioners for later subtraction from the practitioner supply at a later step. For the estimation of the formula, an area with no practitioners is dropped from use in the regression analysis to determine weights for the need variables as a ratio is undefined (not calculable).

Step 3: Select Study Sample

A sample of counties and county equivalents that serve as proxies for a health care market are then selected for analysis to derive formula weights. This step was done to identify places which functioned as primary care service areas and which reported stable, reliable, usable data. According to 2000 Census data, the median county land area is 616 square miles, corresponding to an approximate radius of 14 miles. The tenth and ninetieth percentiles are 288 and 1847 square miles, corresponding to approximate radii of 10 and 24 miles respectively. The approximate radius of a county that is between the tenth and ninetieth percentiles in land area reflects a consensus of the extent of distances traveled for primary care services. The report describing PCSAs developed by Dartmouth and VCU did not identify a median or mean size rather they indicated that ''A land area of 1,256 square miles or a radius of 20 miles (assuming a circular shape) was used as a crude indicator of geographically large PCSAs.'' (Good,man, et al., 2003 p. 297). The population threshold we proposed of 125,000 was chosen based on a perception that cities and counties with populations greater than this level were likely to have many more specialists and tertiary care services structure that would substitute for primary care alone, thus skewing the relationship between primary care practitioners and population. No specific studies were done to further support this assumption. The PCSA project reported a median population of 17,276 with multiple PCSAs exceeding that threshold. Many U.S. counties meet these general qualifications and the process selected a range of counties that met three criteria, including:

i. Populations below 125,000 (410 eliminated*)

ii. Area below 900 square miles (856 eliminated)

iii. Base population to provider ratio below 4250 (336 eliminated)

*Some counties had combinations of both values.

The third criterion effectively eliminated very small counties and counties with unusual distributions of health practitioners. The goal was to determine the relationship of area characteristics to practitioner supply under ''normal'' conditions in order to create stable estimates of those relationships in order to apply them to all appropriate populations and areas.

These sample selection criteria were varied; we tested over 2000 combinations in the estimation process described in the next step to test for robustness and sensitivity. The variations included testing within the following ranges: Population 80,000–150,000; area 700–1200 sq. miles; ratio 3000–4250. Overall, the estimations derived from the models were not substantially different among the different samples. The study sample contained 1643 counties. Counties were chosen because they are well-defined and are not endogenous to the current system.

Using currently designated areas would lead to biased conclusions due to the fact the subcounty areas are carefully and deliberately constructed for purposes of designation. Furthermore, dividing a county into a subcounty-designated and subcounty-undesignated would generate an extremely large number of possible observations in the analysis since the county could be divided in many different ways and into many subsets of county parts. Finally, since some data are calculated and available primarily on a county level, measurement error is minimized by using counties. Using other units of analysis requires interpolating values for subcounty and multicounty areas based on the constituent geographic units.

Step 4: Create Factors

The proposed designation process, in keeping with the original MUA/MUP and HPSA approaches, identified commonly available statistics that correlated with a small number of primary care practitioners-to-population ratio. The selection of the measures was based on reviews of the scientific literature on access to care and preliminary work on the development of an alternative measures of underservice conducted by Donald H. Taylor, Jr. (Taylor & Ricketts, 1994). Candidate statistics were also suggested by a working group of State Primary Care Associations (PCAs) and Primary Care Offices (PCOs) convened by the Division of Shortage Designation (DSD) to gather state-level input into the process of revising the method. The staff and leadership of the DSD also provided extensive input into the design. More than 20 specific variables were suggested during this process. Some candidate variables could not be used, despite being highly correlated with low access and poor health outcomes, due to lack of availability of data for small areas (e.g. lack of health insurance). Ultimately, the high intercorrelations among candidate variables restricted the calculation to 7–9 individual indicators (the actual number to be tested depended upon the specific combination of variables). The final choice of variables and the priority for inclusion in the analysis was based on the degree to which the variables best reflected underlying components of access as qualitatively assessed by the UNC–CH team, the PCA/PCO group, and staff of Bureau of Primary Health Care (BPHC). The final measures consist of demographic, economic and health status indicators (presented in Table 2).

Demographic: Population characteristics, especially racial and ethnic characteristics, have been consistently shown to affect access to primary care (Berk, Bernstein, & Taylor, 1983; Berk, Schur, & Cantor, 1995; Schur & Franco, 1999). Measures of the percent of population that is non-White and percent of population that is Hispanic were used to further adjust the ratio. The inclusion of the percentage of population older than 65 years was also included because communities with higher percentages of elderly have different community characteristics not captured in the initial population adjustment. This is likely due to the relative lack of younger people to provide supportive care and the fact that communities with declining economies, especially rural communities, have older age profiles that combine with other factors to create overall lower access.

Economic: Income and employment are very strong indicators of ability to access primary health care and to afford health insurance (Mansfield, Wilson, Kobrinski, & Mitchell, 1999; Prevention, 2000; Robert, 1999). The unemployment rate and the percent of population below 200 percent of the poverty level were used to further adjust the ratio.

Health Status: Certain populations and communities have higher than average need for health care services based primarily on their health status independent of other factors. Therefore, health status measures used to adjust the ratio include the standardized mortality ratio (General Accounting Office, 1996) and either the infant mortality rate or the low birthweight rate (Matteson, Burr, & Marshall, 1998; O'Campo, Xue, Wang, & Caughy, 1997). These special epidemiological conditions that increase need are not fully represented in the age-gender adjustment.

TABLE 2.—VARIABLES USED IN CREATING PROPOSED METHOD

Demographic	Economic	Health status
Percent Non-white ''NONWHITE'' Percent Hispanic ''HISPANIC'' Percent population >65 years ''ELDERLY''	Percent population <200% FPL ''POVERTY'' Unemployment rate ''UNEMPLOYMENT''	Actual/expected death rate (adj) ''SMR'' Low birth weight rate ''LBW'' Infant mortality rate ''IMR''
Population density ''DENSITY''		

These measures are highly intercorrelated. Table 3 below shows the Pearson-product moment correlations. The first column shows that poverty and unemployment are positively correlated (+0.64), meaning, in counties with high proportions of the

population living in poverty there is usually a higher unemployment rate. Poverty and density are negatively correlated (−0.55), meaning that where there is higher density there are lower percentages of the population living in poverty. The correlation matrix is population-weighted.

TABLE 3.—PERCENTILE CORRELATION MATRIX

	Poverty	Unemp	Density	Elderly	Hispanic	Non-white	SMR	IMR	LBW
Poverty	1.00								
Umemp	0.64	1.00							
Density	−0.55	−0.21	1.00						
Elderly	0.36	0.28	−0.47	1.00					
Hispanic	−0.32	−0.23	0.22	0.25	1.00				
Non-White	0.10	0.12	0.22	−0.29	0.25	1.00			
SMR	0.57	0.55	−0.04	0.04	−0.26	0.42	1.00		
IMR	0.33	0.25	−0.10	0.08	−0.08	0.41	0.43	1.00	
LBW	0.40	0.37	0.05	−0.05	−0.14	0.63	0.69	0.54	1.00

Variable Definitions

Variables were assigned a percentile based on the distribution of values of all U.S. counties to all U.S. counties. This allows for continuity in the use of the proposed scores if variables are defined differently in the future (e.g. the poverty measure is changed to 100 percent below poverty instead of 200 percent). It also allows policymakers a choice of how often (or whether) to update the percentile values without having to change the weights. If poverty conditions improve markedly across the nation, scores will tend to fall unless the percentile tables are updated. For all variables except DENSITY the theoretically worst value corresponded to the 99th percentile. At first glance, it might appear that places with very low population density would be worse off with regard to primary care access and health service needs. Places with extremely high density may also have problems caused by overcrowding and the population density may reflect problems that are commonly encountered in inner-cities. For this variable there is no apparent ''right'' direction for the weights. We arbitrarily specified the functional form such that lower population density corresponds to a worse off (higher percentile score) community. Accounting for the negative effects of very high density is described below.

We combined low birth weight and infant mortality into one measure (called *HEALTH*), defined as the maximum percentile of low birth weight and the infant mortality rate for a given area. This is due to a medium level of correlation between the two and the fact that not all areas report both measures. Finally, the use of the infant mortality rate in measures of underservice is required by existing law and there is precedent for using these measures as rough substitutes. The original Index of Primary Care Shortage described in NPRM–1 of September 1, 1998 used them interchangeably.

We defined nonwhite as the maximum of zero or the percentile minus 40, so that only the top (most nonwhite) 60 percent of areas get ''points'' for the nonwhite variable. In other words, all areas less than the 40th percentile are treated equally. There were two main reasons for this. The first is that many of the areas have low nonwhite percentages (the 40th percentile is about 2.6 percent nonwhite). By not making this adjustment, we are differentiating areas that have little difference in the underlying measure. The second reason is that without this adjustment, the scores were not stable; small differences in the definition of this variable resulted in wide swings in the magnitude of the nonwhite variable when testing multiple randomly chosen samples. We experimented with a multitude of cutoff points (0–50 in 10 unit increments). In the final specification, small changes in the definition of NONWHITE had little substantive effect.

With the corresponding percentiles in hand, the associated scores were transformed to a logarithmic scale so that the highest derivative corresponded to the theoretically worst end of the scale. For example, the independent variable corresponding to poverty (*lnpcpov*) was defined as *Inpcpov = In(100 – pcpov)* so that the fastest acceleration in the poverty score occurs at high levels of poverty rather than at low levels. In other words, we specified the model to allow a greater score to accrue to areas ''moving'' from the 95th percentile to the 96th percentile than to areas ''moving'' from the 5th percentile to the 6th percentile. All variables were assumed to have this shape (so that the theoretically worst values have the largest derivative). A more detailed description of the regression approach is included at the end of this appendix (Notes to Appendix B).

Basing the Scores on the Population-Practitioner Ratio

Although this approach specifies the shape of the function as logarithmic and this constrains the rate of change in the scoring as variables differ from one percentile to another, it does not constrain the sign nor the absolute magnitude of the parameters that create the weights. That is, the regression models are indifferent to whether a parameter comes out positive or negative or how large or small it is when the statistical model is run to create the weights. The magnitude is the most important parameter of the three and will be used for estimating the scores but the potential effects of the size and sign of the weights must fit into our logic of additivity of factors. The magnitude of the weights are expressed as a synthetic unit which cannot be compared to any other unit—the weight for UNEMPLOYMENT, for example, when transformed to the log-normal form and constrained to a positive value in the course of the estimation, is not a ''percent of workforce not working but seeking work'' but an abstract number that describes the relative contribution of that factor to a total access score at that percentile of unemployment given all the value of all the other variables and the population structure. The final model creates an estimate for the weight for each set of variables using this abstract number but that number has to be brought back into a logical relationship with the key unit of access we are using—the population portion of a practitioner-to-population ratio. The final combined sum of these abstract values has to be adjusted back to an interpretable relationship with the practitioner-population ratio. This requires that some form of restraint on the parameter (weight) values be imposed or the solution set may produce a ''best result'' that causes one or two variables to dominate the weighting and others to vary from positive indicators of barriers to access to negative in various combinations.

In the application of the process this means that the parameter is used along with the intercept of the regression models to generate the specific weight for each variable. This was done to normalize the scores so that the minimum score was zero. This is done by adding a fixed number to the log result.

In an unconstrained solution of the regression models this is, indeed, the case. There are possible solution sets that include mixes of positive and negative values; in statistical parlance the functions are ''two-sided.'' The logic of the scoring system anticipated this when we stipulated that factors which restrain use of services by creating barriers to access, also create subsequent higher levels of need likely to be met by higher levels of use, use of services that was preventable but now necessary. In the real community, both things are happening, an access program is promoting appropriate utilization by overcoming access barriers and all practitioners are involved in caring for people who are using the system because emergent conditions were not treated appropriately. The amount of the increase in use brought about by delayed care must be added into the reduction in use to produce a sum of the access ''problem'' in a community. To account for the ''mirror'' effects of these variables, the final value, the sum of the weights are doubled, to produce

a population estimate that is scaled to represent the overall effect on the population need.

Factor Analysis

Because many of these measures are highly correlated, we perform factor analysis in order to compute *factors* for the independent variables defined above. Essentially, factor analysis provides a method to translate highly correlated variables into orthogonal measures to obtain more precise estimates and minimize the impact of multicollinearity in the variables of interest. Often used as an end product statistical tool, we use it here to improve the precision of the estimates.[1]

Our procedure here was to decompose the independent variables into factors and then create scores based on these factors. The factor scores follow in Table 4. The largest weight in the row is the one on which factor the variable weighs most heavily (except for SMR, which has two maximum weights of almost equal magnitude). Four factors might be interpreted as structuring the data:

I. High health risk, nonwhite
II. Geo-demographics
III. Economic conditions
IV. Hispanic

TABLE 4.—FACTOR SCORES

Variable	Factor			
	1	2	3	4
Poverty	−0.005	0.208	−0.423	0.044
Unemp	−0.044	−0.074	−0.338	0.009
Elderly	−0.039	0.355	0.021	−0.226
Density	0.042	0.440	0.051	0.189
Hispanic	0.018	−0.002	0.046	0.291
NonWhite	0.408	−0.012	0.136	0.099
SMR	0.206	−0.107	−0.226	−0.124
Health	0.353	0.066	0.100	−0.046

Step 5: Run Regressions

We regress the base population-to-private supply practitioner ratio on the scores obtained from the factor analysis (Ratio = Factor I + Factor II . . . + error). By combining the scores from the factor analysis with the estimated coefficients from the regression, we obtain the effect of our underlying variables on the ratio.

As an example, the factor analysis might yield a result such as:

Variable	Factor 1	Factor 2
Poverty	.2	.4
Unemployment	.3	−.1

Which we could translate into a matrix

$$\begin{bmatrix} .2 & .4 \\ .3 & -.1 \end{bmatrix}$$

Suppose regressing the ratio onto these two scores yields estimates of

Variable	Beta
Factor 1	1
Factor 2	−.4

which would translate to a vector

$$\begin{bmatrix} 1 \\ -.4 \end{bmatrix}$$

By multiplying these two matrices, we can obtain the total effect of one variable on the ratio:

$$(1) \qquad \begin{bmatrix} .2 & .4 \\ .3 & -.1 \end{bmatrix} \times \begin{bmatrix} 1 \\ -.4 \end{bmatrix} = \begin{bmatrix} .04 \\ .34 \end{bmatrix}$$

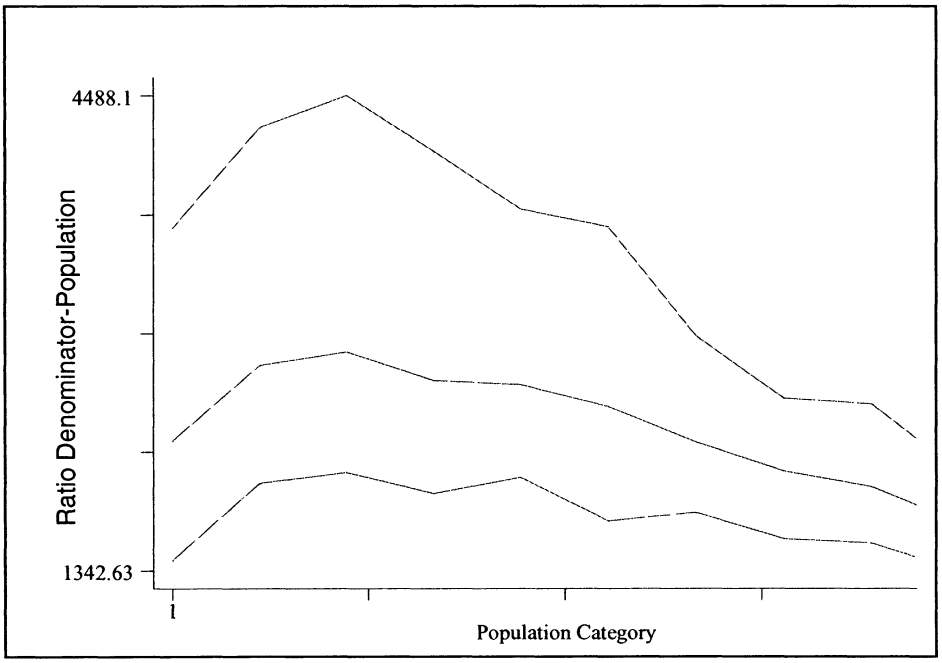
Thus, (in this simple example) the overall effect of Poverty on the ratio is calculated as .04 and the overall effect of Unemployment is .34. We use the rightmost matrix for computing the scores (see the next section) except for one correction (see below).

Weights/Heteroskedasticity

Because the dependent variable is a ratio with population in the denominator, we are concerned about possible heteroskedasticity in the dependent variable. This is the property that the sampling variability in the dependent variable is not constant across the sample. Specifically, we expect the ratio to be estimated more precisely as the population grows. See Figure 1 below for support of this hypothesis—the ratio tends to become less variable as the population increases (population category 1 is the lowest population category and population category 10 is the highest population category). (The upper and lower bands are the values for the 25th and 75th percentiles). The consequence of this violation is that the standard errors from the regression are biased and a more efficient estimator may exist. As such, we weight the regressions by the total population of the county.

[1] Greene (2003) (Greene W. *Econometric Analysis*, 5th Ed. Prentice Hall, New Jersey) acknowledges that the use of principal components regression is sometimes used in the presence of multicollinearity. One of his criticisms is the inability to interpret the underlying regression parameters (p. 59), although this criticism is not very applicable here (the underlying parameters are never considered by the applicants.) More importantly, Greene lays out the tradeoffs: ''If the data suggest that a variable is unimportant in the model, the theory notwithstanding, the researcher ultimately has to decide how strong the commitment is to that theory.'' One of the guiding principles was face validity, which essentially says conventionally accepted wisdom on important determinants of access should suggest included variables.

Figure 1: Heteroskedasticity in Ratio



There is a question of whether we are even dealing with a ''sample'' in the conventional statistical sense. If our analysis is composed of the population of interest, then classical statistical inference is a bit artificial; there is no uncertainty if we have data on all the units of interest. We argue that this is a sample in the conventional sense, for reasons including but not limited to the following:

a. Measurement error occurs more often than we expect. County population values are estimated in 1997 and the accuracy of provider supply is not 100 percent. As the nation observed in the presidential vote count in Florida, even simple computations are not immune from error. Thus, because the data used here are affected by measurement error, we have a sample drawn from the possible data for the population of counties.

b. The units used here are a sample of a much bigger population of interest. Not only are we interested in counties other than those included in the analysis due to sample criteria, ultimately we are using counties as approximations for ''health care markets'' or rational primary care service areas, whether they follow the boundaries of a county or not. These methods are designed to be applied to data for future years and the construction of the areas may vary from one based on geography to ZIP code boundaries.

Other considerations, such as errors in model specification or the discrete ''lumpiness'' associated with using a dependent variable like this one provide support for the use of factor scores.

Sampling Error in the Regression

We wish to reduce the error in predicting the designation of communities. As such, we seek to incorporate the precision with which the regression parameters are estimated into the scoring procedure. As an example, it is entirely possible, given two factors, to have one coefficient be estimated as 100 with a standard error of 1 and the other coefficient to be estimated as 400 with a standard error of 1000. If asked which factor is more important, most people would probably admit that although the 400 is a larger point estimate, the 100 is probably more important given its statistical significance. As such, the regression estimates are adjusted for the statistical significance by the algorithm defined below.[2]

1. Obtain the variance-covariance matrix V of the parameter estimates from the regression.

2. Compute the weighting matrix W defined as the inverse of the Cholesky transformation of a zero matrix except for the diagonal, which consists of the diagonal of V. (This is identical to a zero matrix with diagonal elements equal to the reciprocal of the standard errors of the parameter estimates).

3. Transform the vector of parameter estimates (omitting the constant) b by $b^* = b * W^*$ number of factors/trace(W). The trace() portion of the expression ensures the weights sum to the number of factors.

4. Compute $F = S\ b^*$ as above.

As an example, return to the hypothetical results for poverty and unemployment above. Suppose the (estimated) variance-covariance matrix from the regression was

[2] An alternative treatment would be to discard any statistically insignificant estimates. We have strong conceptual biases against employing such stepwise procedures.

$$V = \begin{bmatrix} .04 & .01 \\ .01 & .49 \end{bmatrix}$$

$$\text{then } W = \begin{bmatrix} 1/\sqrt{.04} & 0 \\ 0 & 1/\sqrt{.49} \end{bmatrix} = \begin{bmatrix} 1/.2 & 0 \\ 0 & 1/.7 \end{bmatrix} = \begin{bmatrix} 5 & 0 \\ 0 & 1.42857 \end{bmatrix}$$

so

$$F = SWb * 2/\text{trace}\ (W)$$

$$= \begin{bmatrix} .2 & .4 \\ .3 & -.1 \end{bmatrix} \times \begin{bmatrix} 5 & 0 \\ 0 & 1.42857 \end{bmatrix} \times \begin{bmatrix} 1 \\ -.4 \end{bmatrix} * \frac{2}{5 + 1.42857}$$

$$= \left(\frac{2}{6.42857} \right) \begin{bmatrix} .7714 \\ 1.557 \end{bmatrix}$$

$$(2) \qquad = \begin{bmatrix} .24 \\ .4844 \end{bmatrix}$$

The estimated scores in equation (2) differ from those obtained in equation (1) (page 17) due to the weight. Because the regression estimate for the first factor is estimated with roughly three times the precision as the estimate for the second factor ($5/1.42 \approx 3$), the estimate for the first factor (1) is weighted more heavily than the estimate for the second factor ($-.4$). In this case, this has the end result of increasing the scores from .04 to .24 for poverty and .34 to .4844 for unemployment. Vector *F* is the scoring vector used in the next step.

Although the process for obtaining matrix *F* is complex and multi-stage the process was completed for all possible values of the variables. Having done this, data describing a service area can be translated readily into percentile scores using a look-up table, a simple spreadsheet, or a web-based application. This parallels the existing MUA scoring process. Applicants do not need to perform Cholesky transformations or any other mathematical calculations. Fundamentally, the ''weighting'' step rescales the regression parameters, placing more weight on more precisely estimated parameters. We are not aware of other published research performing this reweighting, but there are at least two reasons this approach has intuitive appeal. The reweighted models performed better empirically in the sense of minimizing disruption to current designation status. We considered dropping statistically insignificant principal components from the regression and not weighting. Although this would be a more traditional use of principal, components regression (with both its advantages and disadvantages), in addition to subpar performance, the omission of insignificant components drops factors that theory suggests should contribute to access barriers. At its core, this unconventional approach represented the best tradeoff we could devise between health care access theory, statistical theory, and empirical performance.

Task 2: Computation

Step 6: Calculate the Base Population-Provider Ratio for Designation Determination

Using the same age-sex adjusted population from Step 1, we calculate the population-practitioner ratio. All primary care practitioner FTEs in the area are counted to initially determine designation, this is termed the ''Tier 1 designation ratio'' and follows the FTE allocation of

*Providers = active non-federal, primary care physicians + 0.5 * primary care NPs, PAs, and CNMs + 0.1 * medical residents in training*

For applicants not meeting the threshold criterion, the FTEs for practitioners who are supported by safety net programs (e.g., NHSC providers, J–1 visa practitioners, CHC providers) are subtracted from the supply total and the applicant ratio is compared to the threshold. That step is termed ''Tier 2 designations.'' The formula for that calculation follows the same logic as in Step 2, above:

Providers = physicians—(J1_physicians + NHSC_physicians + SLRP_physicians) + .5* [midlevels—(NHSC_midlevels + SLRP_midlevels)] + .1* [residents—(NHSC_residents + SLRP_residents)]

Step 7: Calculate Scores

With row vector *F* in hand, we then turn to computing scores for geographical units. We compute the ratio of population to providers using the algorithm outlined above. We use the percentile scores as computed above for the counties. See the document ''Completing the NPRM2 Application'' for these percentiles.

We then calculate the score for the communities and add this score, upweighted by 2 to account for the 2-sided properties of the regression estimates so the total score for the community equals

*ADJUSTED RATIO (or ''INDEX'') = RATIO + 2 * SCORE*

This is the total score for the community and determines its designation status. The applicants never see the regression multiplier; it is embedded in the tables.

Because the use of the multiplier for the score is applied at this stage of the process, it may be seen as an ad-hoc adjustment. The statistical logic for this has been described above, the policy logic for applying this adjustment is supported by these points:

1. The multiplier is used to account for the fact that the existing measures and processes including: the HPSA formula, the IPCS/MUA formulae, and the practical application of the CHC/RHC clinic placement process—all recognize the importance of the basic population-to-practitioner ratio in determining need. Indeed, some simple models run on the study sample provide evidence that the multiplier should be closer to 10 rather than 2 if the goal were to include every area containing a CHC under the proposed designation process (this assumes that the presence of a CHC is an indicator of need in and of itself as opposed to the result of the calculation of pre-existing unmet need). The IPCS mechanism provided for a maximum score *from the population-practitioner ratio* of 35 points. The maximum score available from other factors (poverty 35 points, IMR/LBW 5 points, minority 5 points, Hispanic 5 points, LI 5 points, density 10 points = 65 points) are, collectively, almost twice that in terms of potential contribution. Thus, the weighted contribution of the factors besides the ratio is roughly twice that of the ratio itself. Multiplying the ratio denominator by two intensifies the relative effect of the underlying, basic population to practitioner ratio in the designation process providing continuity with prior policy.

2. The multiplier functions as a scale/weighting factor. The score has a much smaller variance than the ratio. This is not just an annoyance—it is used to generate a prediction, and thus will have smaller variance than the dependent variable. The dependent variable and the score used here have some sort of meaning, a person per provider, although the various adjustments make this unit of measurement not as meaningful as we might think. One alternative we considered is rescaling the ratio and the score into *z*-scores and using these standardized measures rather than the unscaled measures. This rescaling would

involve multiplying the score by a larger factor than the ratio.

3. The multiplier helps control for the (observed) low ratios in, (e.g., metro) areas with high scores. The following example illustrates this:

TABLE 2.—EXAMPLE SCORE AND RATIOS

County of HPSA	State	Ratio	Score	IPCS	IMR	LBW	Poverty
Bronx	NY ..	1357.2	1043.5	54	10.1	10.1	77.8
Coconino	AZ ..	1266.8	1005.6	56	8.1	7.2	65.1
Kings	NY ..	1634.7	897.8	52	10.3	9.2	59.2
East Baton Rouge	LA ...	1660.5	874	46	11.3	10.2	69
St. Lucie	FL ...	1138.5	873	44	10	7.3	67
Philadelphia	PA ..	1055.9	861.2	47	13.3	11.4	61.1
Mahoning	OH ..	1505.3	839.3	44	10.7	8.9	67.5

The (unmultiplied) maximum score is about 1300. The areas listed above are all in the worst 10 percent of scores. Note that these areas would not qualify without the ''score × 2'' multiplier rule (see below). Perhaps the ratio is a misleading measure in some circumstances.

4. The multiplier fills a statistical role. The score is (likely) more stable across years; e.g., if one physician moves out of a rural area, the ratio varies dramatically. The score is not going to change drastically across years. Thus, it should be given more weight.

5. The multiplier creates a standard which designates roughly the same number of people as the IPCS and the current HPSA designations.

6. It performs better than without the doubling. Although this particular argument has little theoretical basis, it is still compelling.

Why is a portion of the density score function negative?

The astute reader will note that the constant from the regression was dropped and never used. The reason for this is that the constant has no clear meaning in this context. We decided to norm the scores so that the minimum score—that is, the best area in the country—was zero. Thus, although in theory an area could receive a negative score if it had very favorable demographics and had a high population density, in practice no area had a negative score (by definition).

Step 8: Compare to Threshold

Areas are designated if and only if the ''adjusted ratio'' (or ratio+score) is greater than 3000. This threshold was adopted for its reflection of the clear need for a single full-time equivalent primary care physicians, its consistency with prior threshold values, and its familiarity to stakeholders.

Areas With No Practitioners

The problem of how to treat areas with zero providers emerged early in the process of ranking areas as medically underserved. There is an informative treatment of the phenomenon in Black and Chui (1981).* For areas with zero providers, we have not made any firm recommendations and have treated them in one of three ways for various parts of the analysis.

(a) Every area with zero providers automatically gets an adjusted ratio of 3000 (which guarantees them designation), to which a score for community need indicators are added. This results in all areas having a NPRM2 score, including areas with zero providers. This method was used in early tabulations and compilations.

(b) Automatically designate areas with zero providers without assigning an adjusted ratio or a score for community need indicators. Therefore, areas with zero providers will not have a NPRM2 total score. This has occurred when calculations and tabulations of the database using the NPRM2 scoring system was applied. The places with no score were dropped. This method was used in the final impact analysis.

(c) Assigning an arbitrarily small FTE to the area, such as 0.1 to create a score that is primarily dependent upon the denominator population. This was used only in selected tests of the scoring system as an alternative.

Notes to Appendix B: Regression approach for assignment of weights to correlates of ''shortage''

The basic method for assigning weights to individual variables involved the estimation of a county-level linear regression model with the adjusted population-to-physician ratio as the left-hand side variable, and the variables described in step 4 as right-hand side variables. Coefficients on the right-hand side variables can be interpreted directly as average differences in the population-to-physician ratio for counties with specified characteristics relative to counties without those characteristics.

To reduce the effects of extreme outliers (e.g., population density in New York City, or per capita income in Silicon Valley), all variables were converted into percentages. To allow for non-linear relationships between each variable and the ratio, the variables were further converted from a linear variable, ranging from 1 to 100, into twenty five-percentile categorical variables, i.e., one each for 1–5th percentile, 6–10th percentile, * * * 96th–100th percentile. When all but one of these variables are entered on the right-hand side of a regression with the population-to-physician ratio as the dependent variable, the coefficients on each variable represent the average difference in the adjusted population-to-physician ratio relative to the omitted reference category. In most cases, the omitted reference category is the 1–5th percentile, i.e., the five percent of counties with the lowest values for a particular variable.

Entering highly collinear variables, such as income and poverty, into a single regression model usually results in one coefficient being positive, and the other being negative. In order to develop a ''user-friendly'' scoring system in which all weights are positive, variables were added sequentially to the regression model, with the effects of previously entered variables constrained to their estimated effects. As a result, coefficients on all variable other than the first represent the ''marginal differences'' in the ratio, after controlling for all previously included variables.

A decision was made to use a population-to-physician ratio of 3000:1 as a cutoff criterion for designation. The following analysis was restricted to counties with adjusted population-to-physician ratios between 500:1 and 3000:1, for which the dependent variables was not missing (N=2,493).

Income was the single most important correlate of the ratio. It was entered first, and estimates were obtained for each of 19 categories; counties in the 95–100th percentile were the excluded category. Each of the estimated coefficients represents the average difference in the ratio for counties in the respective percentile range relative to the omitted group of counties with the highest income. Coefficients were graphed and examined visually, and differences between the coefficients for ''neighboring'' categories were evaluated for statistical significance. Categories with no statistically significant differences were combined into single variables. As a result of this process, three categories (plus reference category) remained, one each for the 1–75th, 76–85th, and 86–95th percentiles. The regression was run again, suggesting that counties in these categories had higher ratios by 628, 344, and 216 ''units'', respectively. (These units are the average differences in the population-to-physician ratio).

Constraining the coefficients on these variables to these values, 19 percentile ranges for the next-highest correlate of the ratio, population density, were added to the analysis. Visual inspection pointed to clear non-linearities in the relationship. There appeared to be a statistically significant difference between counties in the 95–100th percentile relative to all other counties. Furthermore, the effect was increasing up to the 35th percentile of counties, and then decreased between the 36th and 95th percentiles. *Note that these relationships describe the relationship between population*

* Black, R. A., and Chui, K.–F. (1981). Comparing schemes to rank areas according to degree of health manpower shortage. Inquiry, 18(3), 274–280.

density and the population-to-physician ratio after controlling for the effects of income. Consistent with the observed relationship, three variables were defined, a categorical variable for the 1–95th percentile range, and two splines for the 1–35th and 36–95th percentiles, respectively.

These three variables describing population density were entered into the model together with the income variables, and the estimated coefficients were used to analyze the marginal effect of unemployment according to the same method. Relative to the omitted reference group of counties in the 1–5th percentile, counties in the 6–20th and 21–100th percentile ranges had significantly higher population-to-physician ratios, after controlling for income and population density. Consequently, two dummy variables for counties in these categories were entered into the model. The process was repeated for percent of the population under 200% FPL, which suggested that—after controlling for income, population density, and unemployment—the ratio was lowest for counties with a percentage of the population below 200% poverty around the 20th percentile of all counties. Below this threshold, the average ratio was higher by about 110 ''units'', above that, the ratio gradually increased by about 2.5 ''units'' per percentile increment.

Table 2 shows the results of the final regression model containing the four variables described above. After controlling for these variables, none of the remaining variables was significantly associated with shortage. This finding is consistent with other studies of the effects of community characteristics on access to health care, in that the economic/barrier variables have been shown to have much greater impact than other characteristics. However, legislation requires the use of selected morbidity and mortality measures such as infant mortality and, even if marginal in their net effect, these measures are tied closely to the logic of need for primary care and access to primary care.

To comply with this requirement, the analysis was repeated for actual/expected deaths, the maximum of low birth weight/infant mortality rate, and the percentage of the population over the age of 65. Table 3 shows the results of the final regression model and the specification of each variable. The coefficient estimates in Tables 2 and 3 were used to create a single table containing the weights associated with each variable, for each percentile increment, usually rounding to the nearest increment of 5.

TABLE 2.–COEFFICIENT ESTIMATES FOR ECONOMIC/BARRIER CORRELATES OF SHORTAGE

Correlate of shortage	Cutoffs (percentiles)	Specification	Coefficient	SE	t
Income	0–74	Dummy Variable	355.9	59.3	5.997
	75–84	Dummy Variable	186.0	59.6	3.121
	85–84	Dummy Variable	69.7	53.6	1.301
Population Density	0–95	Dummy Variable	318.6	51.4	6.197
	0–35	Spline	4.23	0.95	4.432
	35–95	Spline	−3.73	0.84	−4.467
Unemployment	5–19	Dummy Variable	167.8	52.0	3.228
	20–99	Dummy Variable	245.4	48.0	5.110
Below 200% FPL	0–14	Dummy Variable	109.0	38.8	2.807
	15–99	Spline	2.36	0.54	4.406
Constant			732.0	78.7	9.297

TABLE 3.—COEFFICIENT ESTIMATES FOR HEALTH/DEMOGRAPHIC CORRELATES OF SHORTAGE

Correlate of shortage	Cutoffs (percentiles)	Specification	Coefficient	SE	t
Actual/Expected Deaths	6–15	Dummy Variable	66.4	64.0	1.038
	16–55	Dummy Variable	121.6	57.2	2.124
	56–75	Dummy Variable	211.2	59.4	3.554
	76–100	Dummy Variable	278.5	60.2	4.625
Infant Morality	81–100	Dummy Variable	65.73	27.41	2.398
Percent 65+	1–100	Continuous	1.93	0.37	5.161
Constant			1364.4	57.2	23.872

List of Subjects

42 CFR Part 5

Health care, Health facilities, Health professions, Health statistics, Health status indicators, Medical care, Medical facility, Dental health, Mental health programs, Physicians, Population census, Poverty, Primary care, Shortages, Underserved, Uninsured.

42 CFR Part 51c

Grant programs—Health, Health care, Health facilities, Reporting and recordkeeping requirements.

For the reasons set out in the preamble the Department of Health and Human Services proposes to amend parts 5 and 51c of title 42 of the Code of **Federal Register** as follows:

PART 5—DESIGNATION OF MEDICALLY UNDERSERVED POPULATIONS AND HEALTH PROFESSIONAL SHORTAGE AREAS

1. The heading for part 5 is revised as set forth above.

2. The authority citation for part 5 is revised to read as follows:

Authority: 42 U.S.C. 254b, 254e.

3. The existing text consisting of §§ 5.1 through 5.4 is designated as subpart A and revised to read as follows:

Subpart A—General Procedures for Designation of Medically Underserved Populations (MUPs) and Health Professional Shortage Areas (HPSAs)

Sec.

5.1 Purpose.
5.2 Definitions.
5.3 Procedures for designation and withdrawal of designation.
5.4 Notice and publication of designation and withdrawals.
5.5 Transition provisions.
5.6 Provisions related to Automatic HPSA designation of certain Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC)

Subpart A—General Procedures for Designation of Medically Underserved Populations (MUPs) and Health Professional Shortage Areas (HPSAs)

§ 5.1 Purpose.

This part establishes criteria and procedures for the designation and withdrawal of designations of medically underserved populations pursuant to section 330(b)(3) of the Public Health

Service Act and of health professional shortage areas pursuant to section 332 of the Act.

§ 5.2 Definitions.

As used in this part:

(a) *Act* means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

(b) *Department* means the Department of Health and Human Services.

(c) *Frontier Area* means those areas identified by the Secretary (through the Frontier Work Group of the Office for the Advancement of Telehealth) as frontier areas, or, until an official list of frontier areas is issued, those U.S. counties or county-equivalent units with a population density less than or equal to 6 persons per square mile.

(d) *FTE* means full-time equivalent, and shall be computed using such guidance as the Secretary may provide.

(e) *Governor* means the Governor or other chief executive officer of a State.

(f) *Health professional shortage area* (or HPSA) means any of the following which the Secretary determines in accordance with this part has a shortage of health professionals:

(1) A rational, geographic service area;

(2) A population group; or

(3) A public or nonprofit private medical facility or other public facility that provides primary medical, dental or mental health services.

(g) *Inner portions of urban areas* means core areas of urbanized central places areas as defined by HRSA, based on data from the Bureau of the Census.

(h) *Population Center* means the census area (tract, division, town, etc.) with the largest population within a proposed rational service area.

(i) *Medical facility* (or other public facility that provides primary medical, dental or mental health services) includes:

(1) A health center, as defined in Section 330(a) of the Public Health Service Act, means an entity that serves a population that is medically underserved, or a special medically underserved population comprised of migratory and seasonal agricultural workers, the homeless, and residents of public housing, by providing, either through the staff and supporting resources of the center or through contracts or cooperative arrangements, required primary health services and, as may be appropriate for particular centers, additional health services necessary for the adequate support of the primary health services required for all residents of the area served by the center (including a community health center, migrant health center, health center for the homeless, or health center for residents of public housing);

(2) Any Federally qualified health center (FQHC), as defined in Section 1861(aa)(4) of the Social Security Act term ''Federally qualified health center'' means an entity which is receiving a grant under section 330 (other than subsection (h)) of the Public Health Service Act, or is receiving funding from such a grant under a contract with the recipient of such a grant, and meets the requirements to receive a grant under section 330 (other than subsection (h)) of such Act; based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant; was treated by the Secretary, for purposes of part B, as a comprehensive Federally funded health center as of January 1, 1990; or is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under Title V of the Indian Health Care Improvement Act.

(3) A rural health clinic [RHC] as defined in Section 1861(aa)(2) of the Social Security Act is primarily engaged in furnishing to outpatients services which is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and in which there are insufficient numbers of needed health care practitioners which is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and in which there are insufficient numbers of needed health care practitioners; a public health center or other medical, dental or mental health facility operated by a city or county or State health department; or a community mental health center (see Section 520 of the Act);

(4) An ambulatory or outpatient clinic of a hospital;

(5) An Indian Health Service facility, or a health program or facility operated under the Indian Self-Determination Act by a tribe or tribal organization; or an Urban Indian Health Program; or

(6) A facility for delivery of health services to inmates in a U.S. penal or correctional institution (under section 323 of the Act), or a State correctional institution; or

(7) A State mental hospital.

(j) *Medically underserved population* (or ''MUP'') means:

(1) The population of a geographic area designated by the Secretary in accordance with this part as having a shortage of personal health services (also called a medically underserved area or MUA); or

(2) A population group designated by the Secretary in accordance with this part as having a shortage of such services.

(k) *Metropolitan statistical* area means an area that has been designated by the Office of Management and Budget as a metropolitan statistical area. All other areas are ''micropolitan'' or ''non-metropolitan'' areas.

(l) *Poverty level* means the current poverty threshold as defined by the Bureau of the Census, which uses a set of money income thresholds that vary by family size and composition to determine who is in poverty. If a family's total income is less than the family's threshold, then that family and every individual in it is considered in poverty. The thresholds are updated annually.

(m) *Primary care clinician* means a physician, nurse practitioner, physician assistant, or certified nurse midwife who practices in a primary care specialty as defined in § 5.104(e)(2) of this part, provides direct patient care, and practices in a primary care setting, as defined in paragraph (n) of this section.

(n) *Primary care setting* means a setting where integrated, accessible health care services are provided by clinicians who are accountable for addressing a large majority of personal health care needs, developing a sustained partnership with patients, practicing in the context of family and community, and providing continuity and integration of health care. It includes but is not limited to health centers as defined in § 5.2(i)(2) of this part, health maintenance organizations, generalist physicians' offices, and ambulatory care facilities operated by hospitals including outpatient facilities that are separate but a part of inpatient facilities; it excludes inpatient facilities, non-primary care physician specialist's offices, and facilities for long term care.

(o) *Secretary* means the Secretary of Health and Human Services, or any officer or employee of the Department to whom the Secretarial authority involved has been delegated.

(p) *State* includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands, the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau.

§ 5.3 Procedures for designation and withdrawal of designation.

(a) Any agency or individual may request the Secretary to designate (or withdraw the designation of) an area,

population group, or facility as an MUP and/or as a HPSA. Requests by State agencies participating in the Department's electronic shortage designation system should be made electronically.

(b) The Applicant will forward a copy of (or relevant electronic information on) each such designation request to the officials and entities listed below in each State affected by the request, asking that they review the request and offer their recommendations, if any, to the Secretary within 30 days:

(1) The Governor;

(2) The head of the State health department or State health agency designated by the Governor, or other health official to whom this reviewing authority has been delegated (such as the Director of the Primary Care Office), and the Director of the State Office of Rural Health;

(3) Appropriate local officials within the State, such as health officers of counties or cities affected;

(4) The State primary care association or other State organization, if any, that represents federally qualified health centers and other community-based primary care organizations in the State;

(5) Affected State medical, dental, and other health professional societies; and

(6) Where a public facility (including a Federal medical facility) is proposed for designation or withdrawal of designation, the chief administrative officer of such facility.

(c) The Secretary may propose the designation, or withdrawal of the designation, of an area, population group, or facility under this part. Where such a designation or withdrawal is proposed, the Secretary will notify the agencies, officials, and entities described in paragraph (b) of this section and request comment as therein provided.

(d) Using data available to the Secretary from national and State sources, and based upon the applicable criteria in the remaining subparts and appendices to this part, the Secretary will annually prepare listings (by State) of currently designated MUPs and HPSAs, together with relevant data available to the Secretary, and will identify those MUPs and HPSAs within the State whose designations, because of age or other factors, are required to be updated. The Secretary will provide the listing for each State and a description of any required information to the entities in that State identified in paragraph (b)(2) and (4) of this section, either electronically or in hard copy, and will request review and comment within 90 days.

(e) The Secretary will furnish, upon request, an information copy of a request made pursuant to paragraph (a) of this section or applicable portions of the materials provided pursuant to paragraph (c) of this section to other interested persons and groups for their review and comment. Resulting comments or recommendations may be provided to the Secretary, the Governor, and/or the State health official identified in paragraph (b)(2) of this section.

(f) In the case of a proposed withdrawal of a designation, the Secretary shall afford other interested persons and groups in the affected area an opportunity to submit data and information concerning the proposed action, including entities directly dependent on the designation and primary care associations and State health professional associations, to the extent practicable.

(g) The Secretary may request such further data and information as he/she deems necessary to evaluate particular proposals or requests for designation or withdrawal of designation under paragraph (a) of this section. Any data so requested must be submitted within 30 days of the request, unless a longer period is approved by the Secretary. If the information requested under paragraph (c) of this section or under this section is not provided, the Secretary will evaluate the proposed designation (including continuation of designation) or withdrawal of designation of the areas, population groups, and/or facilities for which the information was requested on the basis of the information available to the Secretary.

(h) After review and consideration of the available information and the comments and recommendations submitted, the Secretary will designate those areas, population groups, and facilities as MUPs and/or HPSAs, as applicable, which have been determined to meet the applicable criteria under this part, and will withdraw the designations of those which have been determined no longer to meet the applicable criteria under this part.

(i) Urgent Review. If a clinician dies, retires, or leaves an area that is not already designated as an MUP or HPSA with no or limited notice, causing a sudden and dramatic change in primary medical care, dental or mental health services available to that area's population, the State health agency or official identified in paragraph (b)(2) of this section may submit an urgent request to the Secretary on behalf of the affected community that the area be immediately designated as an MUP and/or HPSA. Such urgent requests will be reviewed on an expedited basis, within 30 days of receipt. If

(j) The Secretary fails to complete review of the request within 30 days after receipt, the area as defined by the State agency will be considered designated as an MUP and/or HPSA, as applicable, until and unless subsequent review by the Secretary indicates that inaccurate data were provided or that the situation has changed. Each year, each State may invoke this urgent procedure for processing no more than five percent of the total number of designations the State had at the end of the preceding calendar year.

§ 5.4 Notice and publication of designations and withdrawals.

(a) In the case of a request under § 5.3(a) of this part, the Secretary will give written or electronic notice of the determination made to the individual or agency that made the request. The date of this notice will reflect the actual date of determination.

(b) The Secretary will also give written or electronic notice of a designation (or withdrawal of designation) under this part on or not later than 60 days after the effective date, as noted in paragraph (a) of this section , of the designation (or withdrawal), to:

(1) The Governor of each State in which the designated or withdrawn MUP or HPSA is located in whole or in part;

(2) The State health department or other agency or official identified under paragraph § 5.3(b)(2) of this part of the affected State or States, and any other State agency deemed appropriate by the Secretary; and

(3) Other appropriate public or nonprofit private entities which are located in or which the Secretary determines have a demonstrated interest in the area designated or withdrawn, including entities directly dependent on the designation and primary care associations and State health professional associations.

(c) The Secretary will publish updated lists of designated MUPs and HPSAs in the **Federal Register** after the end of each fiscal year, reflecting designations current at the end of each fiscal year, and make the complete list available on-line, by type of designation and by State, and will maintain a regularly updated Web site of current designations between **Federal Register** list publications. Such listings will distinguish between first and second tier designations as determined pursuant to § 5.103 of this part.

(d) The effective date of the designation of an MUP or HPSA shall be the date of the notification letter or electronic notice provided pursuant to paragraph (a) or (b) of this section, or the date of publication in the **Federal Register**, whichever occurs first.

(e) The effective date of the withdrawal of the designation of an MUP or HPSA shall be the date of the notification letter or electronic notice provided pursuant to paragraph (a) or (b) of this section, or the date on which notification of the withdrawal is published in the **Federal Register**, or the date of publication in the **Federal Register** of an updated list of designations of the type concerned which does not include the designation, whichever occurs first.

§ 5.5 Transition provisions.

(a) Continuation of currently designated MUPs and primary care HPSAs. Except as otherwise provided in this section and § 5.6 of this part, these new criteria for the designation of a MUP or a primary care HPSA will be phased in over a period of three years from the date of publication of the final rule in the **Federal Register**, with the oldest MUP and HPSA designations being reviewed first. Existing designations will remain in effect until reviewed under the new criteria on the schedule set by the Secretary after consultation with State entities as described below.

(b) Revision of MUPs and primary care HPSAs.

(1) The Secretary will, within 90 days after publication of this final rule in the **Federal Register**, submit to the entities in each State identified pursuant to § 5.3(b)(2) and (4) of this part a listing of the adjusted population-to-primary care clinician ratio computed under § 5.104 of this part for each currently designated MUP and primary care HPSA within its boundaries, based on the data and information available to the Secretary.

(2) The State health agency or other designee of the Governor shall have 90 days from receipt of such listing, or such longer time period as the Secretary may approve, to provide comments to the Secretary. Such comments should take into account the effects on local communities and any comments by affected entities and should include recommendations on the following topics:

(i) Where the boundaries of a currently designated MUP and primary care HPSA overlap but do not coincide—

(A) Which service area boundaries the State recommends be continued in effect;

(B) Whether the State proposes to have any remaining area separately designated, either on its own or as part of another service area; or

(C) If the State wishes to identify and consider for designation a new service area instead of either area currently designated, identification of the boundaries recommended.

(ii) Any other service area boundaries (of existing designated areas) that the State recommends be revised;

(iii) The State's suggestions as to which areas should be updated in the first transition year, which in the second, and which in the third;

(iv) The State's recommendations concerning those areas it suggests be updated during the first transition year; and

(v) The accuracy of the FTE primary care clinician data and other data used in scoring.

(3) Where a current MUP and a primary care HPSA designation overlap, and the State makes an election under paragraph (b)(2)(i)(A) of this section, the MUP or primary care HPSA that is not selected will be deemed to be automatically withdrawn.

(4) If part of the area of a currently designated MUP or primary care HPSA is revised under this part and the State does not request designation of the remaining area, the current designation covering the remaining area will be deemed to be automatically withdrawn.

(5) If a State does not provide recommendations to resolve overlapping area situations under paragraph (a) of this section, the Secretary may revise the areas involved, based on the applicable criteria and data and information available.

§ 5.6 Provisions related to Automatic HPSA designation of certain Federally Qualified Health Centers (FQHC) and Rural Health Centers (RHC).

(a) The Health Care Safety Net Amendments of 2002, as amended by Public Law 108–163, provide automatic HPSA designation for at least six years, for all entities that:

(1) Were deemed or certified as an FQHC or RHC, § 5.2(h) of this part, on or after October 26, 2002;

(2) Meet the requirements of section 334 of the Act (concerning the provision of services regardless of ability to pay); and

(3) Do not lose their FQHC or RHC status and/or cease to meet the requirements of section 334 of the Act during that time period.

(b) After the date these regulations take effect, some of the FQHC and RHC entities with automatic HPSA designation as described under paragraph (a) of this section, [or some of the clinical sites of these entities], may also be found to:

(1) Be located in a geographic area that has been designated under the criteria for geographic primary care designations in Subpart B of this part;

(2) Be located in an area containing a population group that has been designated under the population group criteria in Subpart C of this part and serving the designated population group, as determined by the Secretary (e.g., a migrant health center serving a designated migrant population; a homeless health center serving a designated homeless population; a public housing or community health center serving a designated low-income population group); or

(3) Have met the criteria for designation as a safety-net facility in Subpart D of this part.

(c) A list of FQHC and RHC clinical sites that are automatically designated pursuant to paragraph (a) of this section, excluding any clinical sites that have also been found to be covered by another HPSA designation as set forth in paragraph (b) of this section, shall be maintained. This list of automatically designated clinical sites, with their addresses, shall be appended to each list of designated HPSAs published in the **Federal Register** or posted on the web in accordance with § 5.4 (c) of this part.

(d) To maintain HPSA designation after six years of automatic designation, FQHC or RHC clinical sites remaining on the appended list of ''automatic'' HPSAs (or the most recent previous date that the HPSA list was published in the **Federal Register** or posted on the web) will be required to demonstrate that their area meets the criteria in subpart B of this part, that they are serving a population group which meets the criteria in subpart C of this part, or that they meet the facility criteria in subpart D of this part. At or near the end of the six-year period of automatic designation, the FQHCs and RHCs involved will be informed of this requirement by mail, and shall then have 90 days to provide evidence that the criteria are met for the sites in question.

(e) If an FQHC or RHC is notified as described in paragraph (d) of this section that it needs to demonstrate that one or more of its clinical sites meet the designation criteria herein, and fails to submit materials in support of such a finding within 90 days, the sites involved shall then be removed from the HPSA list, unless additional time to provide further information is granted

by the Secretary on a case-by-case basis. Sites so removed can reapply for HPSA/MUP designation under the criteria herein at a later date if their situation changes so that they are able to provide such evidence.

(f) If evidence in support of designation of an FQHC or RHC site under the criteria herein is provided within the 90 day timeframe specified in paragraph (d) of this section, or during such additional time as the Secretary may allow in paragraph (e) of this section, the Secretary will review the evidence submitted and make a determination, within 60 days of receipt. Such sites will remain on the HPSA list until this determination is made.

(g) After review of any information provided as described in paragraph (f) of this section, any FQHC or RHC clinical site which the Secretary determines does not meet the criteria herein shall be removed from the HPSA list. The FQHC or RHC involved will be so notified, and subsequent published or posted HPSA lists will not include such sites.

4. Subpart B is added to read as follows:

Subpart B—Criteria and Methodology for Designation of Geographic Areas as Medically Underserved Areas (MUAs) and Primary Care HPSAs

Sec.

5.101 Applicability.
5.102 Criteria for designation of geographic areas as MUAs and Primary Care HPSAs.
5.103 Identification of rational service areas for the delivery of primary medical care.
5.104 Determination of adjusted population-to-primary care clinician ratio.
5.105 Contiguous area considerations.

Subpart B—Criteria and Methodology for Designation of Geographic Areas as Medically Underserved Areas (MUAs) and Primary Care HPSAs

§ 5.101 Applicability.

The following criteria and methodology shall be used to designate geographic areas as medically underserved (under section 330(b) of the Public Health Service Act) and as primary care HPSAs (under section 332 of the Act).

§ 5.102 Criteria for designation of geographic areas as MUAs and Primary Care HPSAs.

A geographic area will be designated both as a medically underserved area (pursuant to section 330(b) of the Act) and as a primary care HPSA (under Section 332 of the Act) if it is demonstrated, by such data and information as the Secretary may require, that the area meets the following criteria:

(a) The area meets the requirements for a rational service area for the delivery of primary medical care services under § 5.103 of this part; and

(b) The area's adjusted population-to-primary care clinician ratio/score, computed under § 5.104 of this part, equals or exceeds 3,000:1; and

(c) In the case of specific types of areas identified in § 5.105 of this part, resources in contiguous areas are shown to be overutilized or otherwise inaccessible, as defined in § 5.105 of this part.

§ 5.103 Identification of rational service areas for the delivery of primary medical care.

(a) General definition: A rational service area (RSA) is a geographically delimited, continuous and cohesive area around one or more population centers within which a preponderance of the population normally seeks and can reasonably expect to receive primary medical care services.

(b) Each rational service area should be large enough to sustain services and small enough to ensure that primary medical care resources within the RSA are accessible to the population of the RSA within a reasonable travel time, assumed to be 40 minutes for a frontier area and 30 minutes for all other areas unless the provisions of paragraph (g) of this section are invoked by a State.

(1) Travel times in most areas shall be measured by the estimated time required to get from point A to point B by principal roads in an automobile traveling at the speed limit, in typical traffic for the area, taking into consideration the area's terrain.

(2) Travel times within inner portions of urban areas may be computed in terms of travel by public transportation, in areas with at least 20% of the population under 100% of the poverty level and/or a significant reliance on public transportation (e.g. at least over 30% dependent according to the U.S. Census.)

(c) Individual RSAs shall be defined in terms of one or more contiguous U.S. Census Bureau geographic units for which census data are available (e.g. counties, census tracts, census divisions (MCDs/CCDs), or zip code tabulation areas (ZCTAs), the boundaries of which do not overlap with the boundaries of another rational service area.

(d) Cohesiveness for paragraph (a) of this section can be established by demonstrating that the area:

(1) Is isolated from contiguous areas due to topography, market or transportation patterns or other physical barriers, or

(2) Has a homogeneous socioeconomic composition different from those in contiguous areas, and is isolated from or has limited interaction with contiguous communities and/or access barriers to resources in those areas, or

(3) Has a tradition of primarily internal interaction or independence as defined by transportation or market patterns, or

(4) Is a single whole county.

(e) Size of an RSA shall be limited, where an RSA has more than one population center (towns of equivalent size), by a maximum of 30 minutes travel time between population centers within a single RSA.

(f) Geographic separation of RSAs

(1) Geographic separation of RSAs shall be measured by the travel times between the population center(s) of one RSA and those of contiguous RSAs, normally involving a minimum of 30 minutes travel time between population centers of different RSAs.

(2) Travel time from the population center of an RSA to the population center of a contiguous RSA may be less than 30 minutes within metropolitan statistical areas where established neighborhoods and communities display a strong self-identity (as indicated by a homogeneous socioeconomic or demographic structure and/or a tradition of interaction or interdependence), have limited interaction with contiguous areas, and, in general, have a population density equal to or greater than 100 persons per square mile.

(g) RSA parameters determined by State—

(1) RSA parameters different from those defined in paragraph (f) of this section, but within the ranges defined in paragraph (g)(2) of this section, may be used for RSA delineation within a State if:

(i) Such parameters and the method for defining RSAs to be used with those parameters are adopted by the State through a partnership approach with affected State and community officials/stakeholders and in consultation with the Secretary, (ii) The RSA parameters and method selected have the approval of the State health department or other designee of the Governor identified in § 5.3(b)(2) of this part, and

(iii) The final RSA approach to be used has been reviewed by the Secretary in advance of the State submitting particular RSA definitions using its approach.

(2) Permissible Ranges for RSA parameters adopted by States:

(i) The maximum travel time to assure access to care within the RSA is set at 30 minutes in paragraph (b) of this section and the maximum travel time between population centers within the RSA, set generally at 30 minutes in paragraph (e) of this section, may be set at any value greater than or equal to 20 minutes but less than or equal to 40 minutes, for non-frontier RSAs.

(ii) Maximum travel time to assure access to care within a frontier or other sparsely-populated RSA, set generally at 40 minutes in paragraph (e) of this section, may be set at any value greater than 30 minutes but less than or equal to 60 minutes, where topography, market, transportation, or other conditions and patterns lead to utilization of providers at greater distances.

(iii) Separation between RSAs—Minimum travel time from the population center(s) of the RSA to the population center of a contiguous RSA may be set at any value greater than or equal to 20 minutes and less than or equal to 40 minutes.

(h) *State-wide system.* Each State is encouraged to develop a State-wide system which divides the territory of the State into rational service areas (RSAs) for the delivery of primary care services within the State.

(1) This may be done all at once or incrementally, by developing State RSA criteria using the parameter ranges defined above and a process for defining the State's RSAs according to those criteria over a period of time. A full statewide plan is encouraged to maximize its effectiveness in improving the designation process.

(2) Each State-wide system of rational service areas or process for developing State RSAs shall be developed in consultation with the Secretary and be approved by the State health department or other designee of the Governor.

§ 5.104 Determination of adjusted population-to-primary care clinician ratio.

The adjusted population-to-primary care clinician ratio is computed as the sum of the ''barrier-free'' population-to-primary care clinician ratio of an area, calculated as in paragraph (a) of this section, and the area's High Need Indicator score, calculated as paragraph (b) of this section:

(a) *Effective Barrier-Free Population-to Clinician Ratio* for an area is computed as follows:

(1) Estimate the primary care utilization of the area's population if no barriers to accessing health care existed, in total expected visits per year. This shall be done by applying current national utilization rates for populations without access barriers, to current data on the population composition of each area by age and gender. The national utilization rates to be used for this purpose (in visits per year, by age group and gender) will be published in tabular form by the Secretary from time to time. The utilization rate table applicable at the time of publication of this regulation will be included in the preamble; later updates will be made available periodically but no more often than annually.

(2) Divide the resulting total estimated number of annual barrier-free visits for the area by the national mean utilization rate (consistent with the tabular utilization data used and published along with it) to obtain the area's effective (barrier-free) population.

(3) Where an area has a significant number of migratory workers, homeless persons, or seasonal residents, the effective population calculated in paragraph (a)(2) of this section may be adjusted further by multiplying by the factor [Resident Civilian Pop. + Migratory workers & families + Homeless + Seasonal Residents] / Resident Civilian Pop., where these quantities are defined as in paragraph (c)(1) of this section. The resident-civilian population does include some components of the homeless population, so any additions should avoid duplication.

(4) Calculate the ratio of the final effective population to the area's number of FTE primary care clinicians, calculated as discussed in paragraph (c)(2) of this section, to determine the area's barrier-free population-to-primary care clinician ratio.

(b) *High Need Indicator Score.*

(1) The High Need Indicator score for an area is computed as the sum of the area's partial scores for each of the nine variables listed in this paragraph (b)(1):

(i) Percentage of population below 200% of the federal poverty level;

(ii) Unemployment rate;

(iii) Percentage of population that is non-White;

(iv) Percentage of population that is Hispanic;

(v) Percentage of population that is over age 65;

(vi) Population density;

(vii) Actual/expected death rate

(viii) Low birth weight birth rate

(ix) Infant mortality rate

(2) A current national Percentiles Table IV–6 (relating raw scores for each indicator to the national percentile distribution of that indicator at the county level) shall be used to determine an area's percentile rank for each high need indicator at the time of proposed designation or update. HRSA will publish revised percentile tables as a Notice in the **Federal Register** if there are significant changes in the indicators in paragraph (b)(1) in this section.

(3) The percentile rank for each indicator shall then be converted to a partial score, using the Scores Table IV–7.

(4) The total High Need Indicator score is computed as the sum of the nine partial scores computed in paragraph (b)(3) of this section for each indicator.

(c) The barrier-free population-to-primary care clinician ratio/score, as computed in paragraph (a) of this section, is added to the High Need Indicator Score, as computed in paragraph (b) of this section, to obtain the final adjusted population-to-primary care clinician ratio.

(d) The threshold for designation is an adjusted population-to-primary care clinician ratio/score that exceeds 3,000:1.

(e) Calculation of specific variables

(1) *Population counts.* The population of an area is the total resident civilian population, excluding inmates and residents of institutions, based on the most recent U.S. Census data, adjusted for increases/decreases to the current year using the best available intercensus projections, and making the following adjustments, as appropriate:

(i) Migratory workers and their families may be added to the adjusted resident civilian population, if significant numbers of migratory workers are present in the area, using the latest Migrant Health Atlas or best available Federal or State estimates. Estimates used must be adjusted to reflect the percentage of the year that migratory workers are present in the area.

(ii) If an area includes significant numbers of homeless individuals not reflected in the census figures, and reasonable estimates of their numbers are available, these data may be submitted for consideration as an adjustment to the population of the area.

(iii) Where seasonal residents significantly affect the effective total population of an area, seasonal residents (not including tourists) may be added to the adjusted resident civilian population, if supported by acceptable State or local estimates. Estimates used must be adjusted to reflect the percentage of the year that seasonal residents are present in the area.

(iv) Significant numbers of these populations are indicated when the numbers are large enough to reflect an additional burden on the health care

system that the census data do not capture effectively.

(2) *Counting of primary care clinicians.*

(i) In determining an area's adjusted population-to-primary care clinician ratio for designation as a tier 1 shortage area, clinicians shall be counted as follows:

(A) All non-Federal doctors of medicine (M.D.) and doctors of osteopathy (D.O.) who provide direct patient care and practice principally in one of the four primary care specialties (general or family practice, general internal medicine, pediatrics, and obstetrics and gynecology), shall be included in clinician counts.

(B) All non-Federal nurse practitioners, physician's assistants, and certified nurse midwives practicing in primary care settings shall be included in clinician counts, but with a multiplier of:

(*1*) 0.5, or, at the applicant's option,

(*2*) 0.8 times an additional factor whose value is between 0.5 and 1.0, depending on the scope of practice allowed for each type of non-physician clinician in the State involved. A table of these factors for each State and for each type of non-physician clinician will be provided in the final regulation. HRSA will publish an updated table of these factors as a Notice in the **Federal Register** if such updates become available.

(C) Where clinicians are practicing less than full-time, or have more than one practice address, their contribution to the total count may be reduced based on their estimated full-time-equivalency (FTE) practicing within the area being considered, using available data.

(D) Each intern or resident physician shall be 0.1 FTE physician

(E) Hospital staff physicians practicing in organized outpatient departments and primary care clinics shall be counted only on an FTE basis, based on their time in outpatient/ambulatory settings, not in inpatient care.

(F) The following shall be excluded from primary care clinician counts:

(*1*) Practitioners who are engaged solely in administration, research, or teaching;

(*2*) Hospital staff physicians involved exclusively in inpatient and/or in emergency room care; and

(*3*) Clinicians who are suspended under provisions of the Medicare-Medicaid Anti-Fraud and Abuse Act, during the period of suspension.

(ii) In determining an area's adjusted population-to-primary care clinician ratio for designation as a tier 2 shortage area, clinicians shall be counted as provided for above, except that the following clinicians shall also be excluded:

(A) Primary care clinicians who are members of the National Health Service Corps (NHSC), established by section 331(a) of the Act, are fulfilling a service obligation incurred under the NHSC Scholarship or Loan Repayment Program (sections 338A and 338B of the Act) or are fulfilling a service obligation incurred under the State Loan Repayment program (section 338I of the Act);

(B) Physicians who are practicing in the United States under a waiver of their J–1 Visa requirements; and

(C) Primary care clinicians who are providing services at a health center receiving a grant under section 330 of the Act and who are not otherwise excluded under paragraphs (e)(2)(ii)(A) or (B) of this section.

(iii) Counting of FTEs.

(A) Clinician count data in the Department's electronic designation database (from national data, augmented by State data where approved by the Secretary) may be used by applicants without adjustments for designation purposes.

(B) If applicants prefer, they may conduct surveys of the clinicians in area(s) requested for designation. When this is done, FTEs shall be computed using such guidance as the Secretary may provide.

(3) *Data Sources for High Need Indicators*

(i) The Unemployment Rate, High Need Indicator at paragraph (b)(1)(i)(B) of this section, shall be calculated based on the latest Bureau of Labor Statistics unemployment data available for the lowest-level area (county, city, place, or other labor statistics area) that comprises or includes the area.

(ii) Data for the percent below poverty and demographic High Need Indicators at paragraphs (b)(1)(i)(A) and (ii) of this section, for an area shall be aggregated from the latest available U.S. Census data for the counties, census tracts, census divisions or ZCTAs which comprise the area, or from more recent updates thereof if available and approved by the Secretary.

(iii) The health status High Need Indicators at paragraph (b)(1)(iii) of this section shall be calculated based on the latest available five-year average data available, from DHHS or the State involved, for the county of which the service area is a part, unless the area is a subcounty area and statistically significant five-year average subcounty data on these variables are available for that subcounty area. For service areas which cross county lines, a population-weighted combination of the rates for the counties involved shall be used.

§ 5.105 Contiguous area considerations.

(a) An analysis of resources in areas contiguous to the area being considered for designation shall be required only if the State involved has not developed a system of RSAs, or has a partially-developed system which does not include all areas contiguous to the requested area, and the population center of the area for which designation (or update of designation) is sought is less than 30 minutes from the nearest providers.

(b) Where contiguous area analysis is required under paragraph (a) of this section, resources in a particular contiguous area will be deemed to be overutilized or otherwise inaccessible if any of the following conditions exists:

(1) All primary care clinicians in the contiguous area are located more than 30 minutes travel time from the population center(s) of the requested area;

(2) The adjusted (or unadjusted) population-to-FTE primary care clinician ratio within the contiguous area is in excess of 2000:1; or

(3) Primary care clinician(s) located in the contiguous area appear to be inaccessible to the population of the requested area because of specific access barriers, such as:

(i) A lack of economic access to contiguous area resources, particularly where a very high proportion of the requested area's population is poor, and Medicaid-covered or public (sliding-fee-schedule or free) primary care services are not available in the contiguous area; or

(ii) Significant differences exist between the demographic characteristics of the requested area and those of the contiguous area (and its clinicians), indicative of isolation of the requested area's population from the contiguous area, such as language or cultural difference.

5. Subpart C is added to read as follows:

Subpart C—Criteria and Methodology for Designation of Population Groups as MUPs and/or Primary Care HPSAs

Sec.

5.201 Applicability.
5.202 General criteria for designation of specific population groups as MUPs and/or primary care HPSAs.
5.203 Criteria for designation of migratory and seasonal agricultural workers as primary care HPSAs.
5.204 Criteria for designation of homeless populations as primary care HPSAs.
5.205 Criteria for designation of Native American populations as primary care HPSAs and MUPs.

5.206 Requirements for ''permissible'' designation of other population groups as MUPs.

Subpart C—Criteria and Methodology for Designation of Population Groups as MUPs and/or Primary Care HPSAs

§ 5.201 Applicability.

(a) Certain specific population groups will be designated as both MUPs and primary care HPSAs if it is demonstrated that the criteria in § 5.202 of this part are met when applied to data on these population groups. These specific population groups are:

(1) The low income population, defined as that portion of an area's population whose incomes are below 200% of the poverty level.

(2) The Medicaid-eligible population of the area.

(3) Linguistically-isolated populations, defined as the Secretary may with reference to census definitions of linguistically-isolated households and/or populations for whom English is not spoken at all or is a second language not spoken well.

(b) Migratory and seasonal agricultural workers and their families within specific service areas are defined in law as ''special medically underserved populations''. They will also be designated as primary care HPSAs if it is demonstrated that the criteria in § 5.203 of this part are met.

(c) Homeless populations are defined in law as ''special medically underserved populations''. They will also be designated as primary care HPSAs if it is demonstrated that the criteria in § 5.204 of this part are met.

(d) Residents of Public Housing are defined in law as ''special medically underserved populations''. They will also be designated as primary care HPSAs if it is demonstrated that the criteria in § 5.202 of this part are met when computed for the low income population group residing in a particular Public Housing community.

(e) Native American population groups (including American Indian tribes or Alaska Native entities) will be designated as both MUPs and primary care HPSAs if it is demonstrated that the criteria in § 5.205 of this part are met.

(f) If an FQHC, RHC, or other public or nonprofit private clinical site has been designated as a safety-net facility primary care HPSA under Subpart D, § 5.301 of this part (based on service to significant numbers of uninsured and Medicaid-eligible patients), the population group of uninsured and Medicaid-eligible patients served by the clinical site shall be considered designated as an MUP.

(g) Other population groups recommended by State and local officials may be designated as MUPs under unusual local conditions which are a barrier to access to or availability of health services, under procedures described in § 5.206.

§ 5.202 General criteria for designation of specific population groups as MUPs and/or primary care HPSAs.

(a) Any of the specific population groups identified in § 5.201(a) of this part may be designated if it is demonstrated, using such documentation as the Secretary may require, that the following criteria are met when applied to data for the population group:

(1) The area in which the population group resides meets the requirements for a rational service area under § 5.103 of this part;

(2) The rational service area in which the population group resides does not meet the criteria for designation as a geographic area under § 5.102 of this part;

(3) There are access barriers that prevent the population group from accessing primary medical care services available to the general population of the area, as demonstrated by an adjusted population-to-primary care clinician ratio computed for the population group that equals or exceeds the 3000:1 designation threshold in § 5.104 of this part.

(b) In calculating the adjusted population-to-primary care clinician ratio for a population group, the methodology described in § 5.104 of this part shall be used, except that:

(1) The group's population shall be used instead of the area's population,

(2) The FTE clinicians available to the population group shall be used rather than those available to the area in general (i.e. Medicaid FTE/claims and sliding fee scale FTE for a low income population), and

(3) High Need Indicators shall be calculated based as nearly as possible on their values for the applicable population group within the service area, using such approximations as the Secretary may allow.

§ 5.203 Criteria for designation of migratory and seasonal agricultural workers as primary care HPSAs.

(a) Where data availability permits, the method described in § 5.202 of this part may be used to calculate an adjusted population-to-primary care clinician ratio for a population group composed of migratory and seasonal agricultural workers, and to compare this ratio with the 3000:1 designation threshold, with these additional conditions:

(1) For a migratory and seasonal agricultural worker population group, an agricultural area (as defined by the Secretary) may be used as a rational service area.

(2) The population of the migratory and seasonal population group identified must be adjusted by a factor representing the fraction of the year that this population is present in the area.

(b) Alternatively, a simplified designation procedure may be used, as follows:

(1) Define the boundaries of the agricultural area or other service area within which the migratory and seasonal agricultural worker population reside or temporarily reside for a portion of the year.

(2) Provide data on the number of individuals in the population group (including workers and their families) and the number of months they are present in the area during a typical year.

(3) If the number of individuals times the number of months divided by 12 exceeds 1000, this special medically underserved population group will also be considered a primary care HPSA, with its population-to-primary care clinician ratio assumed equal to 3000:1.

§ 5.204 Criteria for designation of homeless populations as primary care HPSAs.

(a) Where data availability permits, the method described in § 5.202 of this part may be used to calculate an adjusted population-to-primary care clinician ratio for a homeless population group (or for a combined homeless and other low-income population group), and compare this ratio with the 3000:1 designation threshold. For such population groups, the area in which homeless populations congregate and/or are sheltered may be used as a rational service area.

(b) Alternatively, a simplified designation procedure may be used, as follows:

(1) Define the boundaries of the area in which homeless populations congregate and/or are sheltered.

(2) Provide data on the average number of homeless individuals in the defined area during a typical year, and the average number of months they are homeless.

(3) If the average number of homeless individuals during a typical year exceeds 1000, this special medically underserved population group will also be considered a primary care HPSA, with its population-to-primary care clinician ratio assumed equal to 3000:1.

§ 5.205 Criteria for designation of Native American population groups as primary care HPSAs and MUPs.

(a) Those American Indian tribes or Alaska Native entities identified by the Department of the Interior as federally recognized are automatically designated as population group primary care HPSAs and MUPs and will be given a baseline ratio of 3000:1.

(b) Where data availability permits, the method described in § 5.202(b) of this part may be used to calculate a higher population-to-primary care clinician ratio for a Native American population group and/or to facilitate scoring such a designation for purposes of allocating program resources. For such designations, a reservation may be used as a rational service area.

§ 5.206 Requirements for ''permissible'' designation of other population groups as MUPs.

The population of a service area that does not meet the criteria at § 5.102 of this part, or a population group that does not meet the criteria in §§ 5.202 through 5.205 of this part, may nevertheless be designated as an MUP if the following requirements are met:

(a) The area or population group is recommended for designation by the Governor of the State in which the area is located and by at least one local official of the area. A local official for this purpose may be—

(1) The chief executive of the local governmental entity which includes all or a substantial portion of the requested area or population group (such as the county executive of a county, mayor of a town, mayor or city manager of a city); or

(2) A city or county health official (such as the head of a city or county health department) of the local governmental entity which includes all or a substantial portion of the requested area or population group.

(b) The request for designation is based on the presence of unusual local conditions, not covered by the criteria at § 5.102 and/or §§ 5.202 through 5.205 of this part, which are a barrier to access to or the availability of personal health services in the area or for the population group for which designation is sought.

(c) The request contains such documentation as the Secretary may require.

6. Subpart D is added to read as follows:

Subpart D—Criteria and Methodology for Designation of Facilities as Primary Care Health Professional Shortage Areas

Sec.

5.301 Criteria for designation of public and nonprofit private medical facilities as safety-net facility primary care HPSAs.
5.302 Criteria for designation of Federal and State correctional institutions as primary care HPSAs.

Subpart D—Criteria and Methodology for Designation of Facilities as Primary Care Health Professional Shortage Areas

§ 5.301 Criteria for designation of public and nonprofit private medical facilities as safety-net-facility primary care HPSAs.

(a) A public or nonprofit private medical facility, or a remote clinical site of such a facility, which is located in a geographic area that is not designated as a geographic primary care HPSA under Subpart B of this part, shall be designated as a ''safety-net-facility'' primary care HPSA if the following criteria are met:

(1) The facility or site is or is part of an FQHC, RHC or other public or nonprofit private medical facility which provides primary medical care services on an ambulatory or outpatient basis, and

(2) The facility or clinical site is identifiable as a safety-net facility based on service to significant numbers of uninsured and Medicaid-eligible patients, as determined using payment source data and the minimum requirements by type of area described in paragraph (b) of this section.

(b) *Methodology.* In determining whether public or nonprofit private facilities or clinical sites are safety-net facilities for purposes of this designation, the following methodology will be used:

(1) The facility or particular site for which designation is sought must meet all of the following requirements:

(i) Currently provides full-time ambulatory or outpatient primary medical care;

(ii) Provides services regardless of an individual's ability to pay for such services; and

(iii) Has a posted, discounted sliding-fee-scale which is available to all uninsured patients with incomes below 200% of the poverty line.

(2) Payment source criteria. Using such documentation as may be required by the Secretary, it must be demonstrated that:

(i) At least 10% of all patients served at each facility or clinical site (or group of such sites, where payment source data are available only for the group) are indigent uninsured, receiving services free or on a discounted sliding fee scale.

(ii) The number of patients served that are paid under Medicaid, plus the number who receive services free or on a discounted sliding fee scale, as a percentage of all patients served at each facility or clinical site (or group of such sites, where payment source data are available only for the group) must equal or exceed the following:

(A) 40% in metropolitan areas

(B) 30% in non-metropolitan, non-frontier areas

(C) 20% of all patients in frontier, non-metropolitan areas

§ 5.302 Criteria for designation of Federal and State correctional institutions as primary care HPSAs.

(a) Medium to maximum security Federal and State correctional institutions and youth detention facilities will be designated as primary care HPSAs, if both of the following criteria are met:

(1) The institution has at least 250 inmates; and

(2) The institution has no primary medical care clinicians, or the ratio of the number of inmates per year to the number of FTE primary care clinicians, determined in accordance with § 5.104(e)(2) of this part, serving the institution is at least 1,000:1.

(b) For purposes of this paragraph, the number of inmates shall be determined as follows:

(1) If the number of new inmates per year and the average length-of-stay are not specified, or if the information provided does not indicate that intake medical examinations are routinely performed upon entry, then the number of inmates is used.

(2) If the average length-of-stay is specified as one year or more, and intake medical examinations are routinely performed upon entry, then the number of inmates equals the average number of inmates plus 0.3 multiplied by the number of new inmates per year; or

(3) If the average length-of-stay is specified as less than one year, and intake examinations are routinely performed upon entry, then the number of inmates equals the average number of inmates plus 0.2 multiplied by (1 + ALOS/2) multiplied by the number of new inmates per year, where ALOS is the average length of stay, in fraction of a year.

(c) Clinicians permanently employed by the Federal Bureau of Prisons or by States to provide services to Federal or State prisoners shall be counted based on the FTE services they provide, calculated as provided for in § 5.104(c)(2).

7. Subpart E is added to read as follows:

Subpart E—Identification of Primary Care Health Professional Shortage Areas of Greatest Need

§ 5.401 Use of methodology for identification of HPSAs of greatest need.

The adjusted population to clinician ratios that are the result of the calculations in the methodology will be used as the relative scores to identify those HPSAs of Greatest Need. Areas will be ranked according to the ratios calculated to determine an area's eligibility for designation.

8. Appendix A to part 5 is revised to read as follows:

Appendix A to Part 5—Scoring Table for High Need Indicators Used in MUP and Primary Care HPSA Designation

TABLE A–1.—SCORES FOR HIGH NEED INDICATORS, GIVEN THEIR NATIONAL PERCENTILES

Percentile	Poverty	Unemp	Elderly	Density	Hispanic	Non white	Death rate	LBW/IMR
0	0.00	0.00	0.00	995.20	0.00	0.00	0.00	0.00
1	3.01	1.18	0.54	831.13	0.81	0.00	0.82	0.72
2	6.04	2.37	1.09	735.15	1.64	0.00	1.65	1.44
3	9.11	3.58	1.65	667.05	2.47	0.00	2.49	2.17
4	12.21	4.79	2.21	614.23	3.31	0.00	3.33	2.91
5	15.34	6.02	2.77	571.07	4.15	0.00	4.19	3.65
6	18.50	7.26	3.34	534.58	5.01	0.00	5.05	4.40
7	21.70	8.52	3.92	502.98	5.88	0.00	5.93	5.17
8	24.93	9.79	4.51	475.10	6.75	0.00	6.81	5.93
9	28.20	11.07	5.10	450.16	7.64	0.00	7.70	6.71
10	31.50	12.37	5.69	427.59	8.53	0.00	8.60	7.50
11	34.84	13.68	6.30	407.00	9.44	0.00	9.52	8.29
12	38.22	15.00	6.91	388.05	10.35	0.00	10.44	9.10
13	41.64	16.35	7.53	370.51	11.28	0.00	11.37	9.91
14	45.10	17.70	8.15	354.18	12.21	0.00	12.32	10.73
15	48.59	19.08	8.78	338.90	13.16	0.00	13.27	11.57
16	52.13	20.46	9.42	324.55	14.12	0.00	14.24	12.41
17	55.71	21.87	10.07	311.02	15.09	0.00	15.22	13.26
18	59.34	23.29	10.72	298.22	16.07	0.00	16.21	14.12
19	63.00	24.73	11.39	286.08	17.07	0.00	17.21	15.00
20	66.72	26.19	12.06	274.53	18.07	0.00	18.22	15.88
21	70.48	27.67	12.74	263.52	19.09	0.00	19.25	16.78
22	74.29	29.16	13.43	253.00	20.12	0.00	20.29	17.68
23	78.15	30.68	14.12	242.92	21.17	0.00	21.34	18.60
24	82.06	32.21	14.83	233.26	22.23	0.00	22.41	19.53
25	86.02	33.77	15.55	223.98	23.30	0.00	23.49	20.48
26	90.03	35.34	16.27	215.04	24.39	0.00	24.59	21.43
27	94.10	36.94	17.01	206.43	25.49	0.00	25.70	22.40
28	98.22	38.56	17.75	198.13	26.61	0.00	26.83	23.38
29	102.40	40.20	18.51	190.10	27.74	0.00	27.97	24.38
30	106.64	41.86	19.28	182.34	28.89	0.00	29.13	25.39
31	110.95	43.55	20.05	174.83	30.05	0.00	30.30	26.41
32	115.31	45.27	20.84	167.54	31.23	0.00	31.49	27.45
33	119.74	47.01	21.64	160.47	32.43	0.00	32.70	28.50
34	124.24	48.77	22.45	153.61	33.65	0.00	33.93	29.57
35	128.80	50.56	23.28	146.94	34.89	0.00	35.18	30.66
36	133.44	52.38	24.12	140.46	36.14	0.00	36.45	31.76
37	138.15	54.23	24.97	134.15	37.42	0.00	37.73	32.88
38	142.93	56.11	25.83	128.00	38.72	0.00	39.04	34.02
39	147.79	58.02	26.71	122.00	40.03	0.00	40.37	35.18
40	152.74	59.96	27.61	116.16	41.37	0.00	41.72	36.36
41	157.76	61.93	28.51	110.46	42.73	1.39	43.09	37.55
42	162.87	63.94	29.44	104.89	44.12	2.81	44.48	38.77
43	168.07	65.98	30.38	99.44	45.53	4.25	45.90	40.01
44	173.36	68.06	31.33	94.12	46.96	5.71	47.35	41.27
45	178.75	70.17	32.31	88.92	48.42	7.20	48.82	42.55
46	184.24	72.33	33.30	83.83	49.90	8.72	50.32	43.86
47	189.83	74.52	34.31	78.85	51.42	10.27	51.85	45.19
48	195.52	76.75	35.34	73.97	52.96	11.85	53.40	46.54
49	201.33	79.03	36.39	69.18	54.53	13.46	54.99	47.92
50	207.25	81.36	37.46	64.50	56.14	15.10	56.60	49.33
51	213.29	83.73	38.55	59.90	57.77	16.77	58.25	50.77
52	219.45	86.15	39.66	55.39	59.44	18.48	59.94	52.24
53	225.75	88.62	40.80	50.97	61.15	20.22	61.66	53.74
54	232.18	91.15	41.96	46.62	62.89	22.00	63.41	55.27
55	238.75	93.73	43.15	42.36	64.67	23.82	65.21	56.83
56	245.47	96.36	44.37	38.17	66.49	25.68	67.04	58.43
57	252.34	99.06	45.61	34.05	68.35	27.58	68.92	60.07
58	259.38	101.82	46.88	30.01	70.26	29.53	70.84	61.74
59	266.59	104.65	48.18	26.03	72.21	31.53	72.81	63.46
60	273.97	107.55	49.52	22.11	74.21	33.57	74.83	65.21
61	281.54	110.52	50.89	18.27	76.26	35.67	76.89	67.02
62	289.30	113.57	52.29	14.48	78.36	37.82	79.02	68.87

TABLE A–1.—SCORES FOR HIGH NEED INDICATORS, GIVEN THEIR NATIONAL PERCENTILES—Continued

Percentile	Poverty	Unemp	Elderly	Density	Hispanic	Non white	Death rate	LBW/IMR
63	297.28	116.70	53.73	10.75	80.52	40.03	81.19	70.76
64	305.47	119.92	55.21	7.08	82.74	42.30	83.43	72.71
65	313.89	123.22	56.73	3.47	85.02	44.63	85.73	74.72
66	322.56	126.63	58.30	-0.09	87.37	47.03	88.10	76.78
67	331.49	130.13	59.91	-3.60	89.79	49.50	90.54	78.91
68	340.69	133.74	61.58	-7.06	92.28	52.05	93.05	81.10
69	350.18	137.47	63.29	-10.46	94.85	54.68	95.64	83.36
70	359.98	141.32	65.06	-13.82	97.51	57.39	98.32	85.69
71	370.12	145.30	66.90	-17.13	100.25	60.20	101.09	88.10
72	380.61	149.41	68.79	-20.40	103.10	63.11	103.95	90.60
73	391.49	153.68	70.76	-23.62	106.04	66.12	106.92	93.19
74	402.77	158.11	72.80	-26.79	109.10	69.24	110.01	95.87
75	414.50	162.72	74.92	-29.93	112.27	72.49	113.21	98.67
76	426.70	167.51	77.12	-33.02	115.58	75.87	116.54	101.57
77	439.43	172.50	79.42	-36.08	119.03	79.39	120.02	104.60
78	452.72	177.72	81.83	-39.09	122.63	83.07	123.65	107.76
79	466.63	183.18	84.34	-42.07	126.39	86.93	127.45	111.08
80	481.22	188.91	86.98	-45.01	130.35	90.97	131.43	114.55
81	496.55	194.93	89.75	-47.92	134.50	95.21	135.62	118.20
82	512.72	201.28	92.67	-50.78	138.88	99.69	140.04	122.05
83	529.81	207.98	95.76	-53.62	143.51	104.42	144.70	126.11
84	547.94	215.10	99.03	-56.42	148.42	109.44	149.65	130.43
85	567.23	222.68	102.52	-59.19	153.65	114.79	154.92	135.02
86	587.86	230.77	106.25	-61.93	159.23	120.50	160.56	139.93
87	610.02	239.47	110.26	-64.63	165.23	126.64	166.61	145.21
88	633.95	248.87	114.58	-67.31	171.72	133.26	173.15	150.90
89	659.97	259.08	119.28	-69.95	178.76	140.47	180.25	157.10
90	688.47	270.27	124.43	-72.57	186.48	148.36	188.04	163.88
91	719.97	282.63	130.13	-75.15	195.02	157.08	196.64	171.38
92	755.19	296.46	136.49	-77.71	204.56	166.84	206.26	179.76
93	795.11	312.13	143.71	-80.24	215.37	177.89	217.16	189.27
94	841.20	330.23	152.04	-82.75	227.85	190.66	229.75	200.24
95	895.72	351.63	161.89	-85.23	242.62	205.75	244.64	213.21
96	962.43	377.82	173.95	-87.68	260.69	224.23	262.86	229.10
97	1048.45	411.58	189.50	-90.11	283.99	248.05	286.36	249.57
98	1169.68	459.18	211.41	-92.51	316.83	281.62	319.47	278.43
99	1376.93	540.53	248.87	-94.89	372.97	339.02	376.07	327.76

9. The heading for Appendix B to part 5 is revised to read as follows:

Appendix B to Part 5—Criteria for Designation of Areas Having Shortages of Dental Professionals

* * * * *

Appendices D, E, F, G [Removed]

10. Appendices D, E, F, and G of part 5 are removed.

PART 51c—GRANTS FOR COMMUNITY HEALTH SERVICES

11. The authority citation for part 51c is revised to read as follows:

Authority: 42 U.S.C. 216, 254c.

12. Section 51c.102 is amended by revising paragraph (e) and adding paragraph (k) to read as follows:

§ 51c.102 Definitions.

* * * * *

(e) *Medically underserved population* means the population of an urban or rural area which is designated as a medically underserved population by the Secretary under part 5 of this chapter.

* * * * *

(k) *Special medically underserved population* means a population defined in section 330(g), 330(h), or 330(i) of the Act. These include migratory and seasonal agricultural workers, homeless populations, and residents of public housing, A special medically underserved population is not required to be designated in accordance with part 5 of this chapter.

13. Section 51c.104 is amended by revising paragraph (b)(3) and adding paragraph (d) to read as follows:

§ 51c.104 Applications.

* * * * *

(b) * * *

(3) The results of an assessment of the need that the population served or proposed to be served has for the services to be provided by the project (or in the case of applications for planning and development projects, the methods to be used in assessing such need), utilizing, but not limited to, the factors set forth in § 5.104 of this chapter.

* * * * *

(d) If an application funded under this part demonstrates that the grantee would serve a designated medically underserved population at the time of application, then the grantee will be assumed to be serving a medically underserved population for the duration of the project period, even if the designation is withdrawn during the project period.

14. Section 51c.203 is amended by revising paragraph (a) to read as follows:

§ 51c.203 Project elements.

* * * * *

(a) Prepare an assessment of the need of the population proposed to be served by the community health center for the services set forth in § 51c.102(c)(1), with special attention to the need of the medically underserved population for such services. Such assessment of need shall, at a minimum, consider the factors listed in § 5.103(b) of this chapter.

* * * * *

Dated: May 23, 2005.

Betty Duke,

Administrator, Health Resources and Services Administration.

Approved: March 26, 2007.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

Editorial Note: This document was received at the Office of the Federal Register on February 21, 2008.

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February 29, 2008

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 71
Asbestos Exposure Limit; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, and 71

RIN 1219–AB24

Asbestos Exposure Limit

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its existing health standards for asbestos exposure at metal and nonmetal mines, surface coal mines, and surface areas of underground coal mines. This final rule reduces the permissible exposure limits for airborne asbestos fibers and makes clarifying changes to the existing standards. Exposure to asbestos has been associated with lung cancer, mesothelioma, and other cancers, as well as asbestosis and other nonmalignant respiratory diseases. This final rule will help improve health protection for miners who work in an environment where asbestos is present and lower the risk that miners will suffer material impairment of health or functional capacity over their working lifetime.

DATES: This final rule is effective April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey at *silvey.patricia@dol.gov* (E-mail), 202–693–9440 (Voice), or 202–693–9441 (Fax).

SUPPLEMENTARY INFORMATION: The outline of this preamble is as follows:

I. Summary
II. Background to the Final Rule
  A. Scope of Final Rule
  B. Mineralogy and Analytical Methods for Asbestos
  C. Summary of Asbestos Health Hazards
  D. Factors Affecting the Occurrence and Severity of Disease
  E. MSHA Asbestos Standards
  F. OSHA Asbestos Standards
III. Asbestos Exposures in Mines
  A. Where Asbestos Is Found at Mines
  B. Sampling Data and Exposure Calculations
  C. Summary of MSHA's Asbestos Air Sampling and Analysis Results
  D. Prevention of Asbestos Take-Home Contamination
IV. Application of OSHA'S Risk Assessment to Mining
  A. Summary of OSHA's Risk Assessment
  B. Risk Assessment for the Mining Industry
  C. Characterization of the Risk to Miners
V. Section-by-Section Analysis of Final Rule
  A. Sections 56/57.5001(b)(1) and 71.702(a): Definitions
  B. Sections 56/57.5001(b)(2) and 71.702(b): Permissible Exposure Limits (PELs)
  C. Sections 56/57.5001(b)(3) and 71.702(c): Measurement of Airborne Fiber Concentration
  D. Section 71.701(c) and (d): Sampling; General Requirements
VI. Regulatory Analyses
  A. Executive Order (E.O.) 12866
  B. Feasibility
  C. Alternatives Considered
  D. Regulatory Flexibility Analysis (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)
  E. Other Regulatory Considerations
VII. Copy of the OSHA Reference Method (ORM)
VIII. References Cited in the Preamble

I. Summary

The final rule lowers MSHA's permissible exposure limits (PELs) for asbestos; incorporates the Occupational Safety and Health Administration (OSHA) Reference Method (29 CFR 1910.1001, Appendix A) for MSHA's analysis of mine air samples for asbestos; and makes several clarifying changes to MSHA's existing rule. MSHA is issuing this health standard limiting miners' exposure to asbestos under section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act). MSHA based this final rule on its experience, an assessment of the health risks of asbestos, OSHA's rulemaking history and enforcement experience with its asbestos standard and public comments and testimony on MSHA's asbestos proposed rule.

To protect the health of miners, this final rule lowers MSHA's 8-hour, time-weighted average (TWA), full-shift PEL from 2 fibers per cubic centimeter of air (f/cc) to 0.1 f/cc. The existing excursion limit for metal and nonmetal mines is 10 fibers per milliliter (f/mL) for 15 minutes and the existing excursion limit for coal mines is 10 f/cc for a total of 1 hour in each 8-hour day. This final rule lowers these existing excursion limits to 1 f/cc for 30 minutes. Together, these lower PELs significantly reduce the risk of material impairment for exposed miners. These final PELs are the same as proposed and the same as OSHA's asbestos exposure limits. Although OSHA stated in the preamble to its 1994 final rule (59 FR 40967) that there is a remaining significant risk of material impairment of health or functional capacity at the 0.1 f/cc limit, OSHA concluded that this concentration is ''the practical lower limit of feasibility for measuring asbestos levels reliably.'' MSHA agrees with this conclusion.

To clarify the criteria for the analytical method that MSHA will use to analyze mine air samples for asbestos under this final rule, the rule includes a reference to Appendix A of OSHA's asbestos standard (29 CFR 1910.1001). Appendix A specifies basic elements of a phase contrast microscopy (PCM) method for analyzing airborne asbestos samples, which includes the same basic analytical elements as those specified in MSHA's existing standards.

Because the risk assessment used as the basis for MSHA's asbestos PELs relies on PCM-based methodology, MSHA will continue to use PCM as the primary methodology for analyzing air samples to determine compliance with the PELs. PCM provides a relatively quick and cost-effective analysis of asbestos samples. In addition, MSHA will continue to follow-up with its policy of using a transmission electron microscopy (TEM) analysis when PCM results indicate a potential overexposure.

MSHA, however, encourages the development of analytical methods specifically for asbestos in mine air samples. MSHA will consider using a method statistically equivalent to Appendix A, if it meets the OSHA Reference Method (ORM) equivalency criteria in OSHA's asbestos standard [29 CFR 1910.1001(d)(6)(iii)] and is recognized by a laboratory accreditation organization. For example, ASTM D7200–06, ''Standard Practice for Sampling and Counting Airborne Fibers, Including Asbestos Fibers, in Mines and Quarries, by Phase Contrast Microscopy and Transmission Electron Microscopy,'' contains the same procedure as NIOSH 7400 to identify fibers. ASTM D7200–06 then has an additional procedure to discriminate potential asbestos fibers, which NIOSH 7400 does not. NIOSH is supporting an ASTM inter-laboratory study to determine whether this additional procedure can be performed accurately and consistently. This procedure was developed in part as a result of this rulemaking and has not been validated.

II. Background to the Final Rule

A. Scope of Final Rule

This final rule applies to all metal and nonmetal mines, surface coal mines, and surface areas of underground coal mines. It is substantively unchanged from the proposed rule and contains the same PELs and analytical method as in OSHA's asbestos standard. Some commenters supported additional changes to MSHA's definition of asbestos and its analytical method. Others recommended that MSHA propose additional requirements from the OSHA asbestos standard to prevent take-home contamination. Such changes were not contemplated in the proposed

rule and, therefore, are beyond the scope of this final rule.

B. Mineralogy and Analytical Methods for Asbestos

Asbestos is a generic term used to describe the fibrous habits of specific naturally occurring, hydrated silicate minerals. Several federal agencies [1] have regulations that address six asbestos minerals: chrysotile, crocidolite, cummingtonite-grunerite asbestos (amosite), actinolite asbestos, anthophyllite asbestos, and tremolite asbestos. Other agencies address asbestos more generally.[2]

The terminology used to refer to how minerals form and how they are named is complex. Much of the existing health risk data for asbestos uses the commercial mineral terminology.[3] In the asbestiform habit, mineral crystals grow forming long, thread-like fibers. The U.S. Bureau of Mines defined *asbestiform minerals* to be ''a certain type of mineral fibrosity in which the fibers and fibrils possess high tensile strength and flexibility.'' [4] When light pressure is applied to an asbestiform fiber, it bends much like a wire, rather than breaks. In the nonasbestiform habit, mineral crystals do not grow in long thin fibers; they grow in a more massive habit. When pressure is applied, the nonasbestiform crystals fracture into prismatic particles, which are called cleavage fragments because they result from the particle's breaking or cleavage. Cleavage fragments may be formed when nonfibrous minerals are crushed, as may occur in mining and milling operations. Distinguishing between asbestiform fibers and cleavage fragments in certain size ranges can be difficult or impossible for some minerals.[5]

C. Summary of Asbestos Health Hazards

Studies first identified health problems associated with occupational exposure to asbestos in the early 20th century among workers involved in the manufacturing or use of asbestos-containing products.[6] These studies identified the inhalation of asbestos as the cause of asbestosis, a slowly progressive disease that produces lung scarring and loss of lung elasticity. Studies also found that asbestos caused lung and several other types of cancer.[7] For example, mesotheliomas, rare cancers of the lining of the chest or abdominal cavities, are almost exclusively attributable to asbestos exposure. Once diagnosed, they are rapidly fatal. The damage following many years of workplace exposure to asbestos is generally cumulative and irreversible. Most asbestos-related diseases have long latency periods, typically not producing symptoms for 20 to 30 years following initial exposure. Studies also indicate adverse health effects in workers who have had relatively brief exposures to asbestos.[8]

Several studies have examined respiratory health and respiratory symptoms of asbestos-exposed workers.[9] Asbestos-induced pleurisy is the most common asbestos-related condition to occur during the 20-year period immediately following a worker's first exposure to asbestos.[10] Pleural plaques may develop within 10–20 years after an initial asbestos exposure [11] and slowly progress in size and amount of calcification, independent of any further exposure. Diffuse pleural thickening and pleural plaques are biologic markers reflecting previous asbestos exposure.[12] In addition, presence in lung tissue of asbestos fibers with a coating of iron and protein, called asbestos bodies, is one of the criteria that serve to support a pathologic diagnosis of asbestosis.[13] These nonmalignant respiratory conditions can be used to identify at-risk miners prior to their developing a more serious asbestos disease.

Because the hazardous effects from exposure to asbestos are well known, MSHA's discussion in this section will focus on the results of studies and literature reviews published since the publication of OSHA's risk assessment, and those involving miners. One such review by Tweedale (2002) stated,

> Asbestos has become the leading cause of occupational related cancer death, and the second most fatal manufactured carcinogen (after tobacco). In the public's mind, asbestos has been a hazard since the 1960s and 1970s. However, the knowledge that the material was a mortal health hazard dates back at least a century, and its carcinogenic properties have been appreciated for more than 50 years.

Greenberg (2003) also published a recent review of the biological effects of asbestos and provided a historical perspective similar to that of Tweedale.

The three most commonly described adverse health effects associated with asbestos exposure are lung cancer, mesotheliomas, and pulmonary fibrosis (i.e., asbestosis). OSHA, in its 1986 asbestos rule, reviewed each of these diseases and provided details on the studies demonstrating the relationship between asbestos exposure and the clinical evidence of disease.[14] In 2001, the Agency for Toxic Substances and Disease Registry (ATSDR) published an updated *Toxicological Profile for Asbestos* that also included an extensive discussion of these three diseases. A search of peer-reviewed scientific literature yielded many new articles [15] that continue to demonstrate and support findings of asbestos-induced lung cancer, mesotheliomas, and asbestosis, consistent with the conclusions of OSHA and ATSDR. Thus, in the scientific community, there is compelling evidence of the adverse health effects of asbestos exposure.

D. Factors Affecting the Occurrence and Severity of Disease

The toxicity of asbestos, and the subsequent occurrence of disease, is related to its concentration in the air and the duration of exposure. Other variables, such as the fiber's characteristics or the effectiveness of a person's lung clearance mechanisms, lung fiber burden, residence-time-weighted cumulative exposures, and susceptible populations are also relevant factors affecting disease severity.[16]

1. Fiber Concentration

Early airborne asbestos dust measurements had counted particles

[1] In addition to MSHA's and OSHA's existing worker protection standards, other federal statutory and regulatory requirements that apply only to the six commercial varieties of asbestos include the Asbestos Hazard Emergency Response Act (AHERA) [15 U.S.C. 2642(3)] and the Clean Air Act's National Emission Standards for Hazardous Air Pollutants (NESHAP) [40 CFR 61.141].

[2] Asbestos is listed as a hazardous air pollutant under the Clean Air Act [42 U.S.C. 7412(b)(1)]; as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act [40 CFR 302.4]; and in EPA's Integrated Risk Information System (IRIS), a collection of health assessment information regarding the toxicity of asbestos, *http://www.epa.gov/IRIS/susbst/0371.htm*.

[3] Asbestos mineralogy was discussed more fully in the proposed rule (70 FR 43952–43953).

[4] U.S. Bureau of Mines (Campbell *et al.*), 1977.

[5] Meeker *et al.*, 2003.

[6] GETF Report, p. 38, 2003; OSHA (40 FR 47654), 1975.

[7] Doll, 1955; Reeves *et al.*, 1974; Becker *et al.*, 2001; Browne and Gee, 2000; Sali and Boffetta, 2000; IARC, 1987.

[8] Sullivan, 2007.

[9] Wang *et al.*, 2001; Delpierre *et al.*, 2002; Eagen *et al.*, 2002; Selden *et al.*, 2001.

[10] Rudd, 2002.

[11] Bolton *et al.*, 2002; OSHA, 1986.

[12] ATSDR, 2001; Manning *et al.*, 2002.

[13] ATSDR, 2001; Peacock *et al.*, 2000; Craighead *et al,* 1982.

[14] Berry and Newhouse, 1983; Dement *et al.*, 1982; Finkelstein, 1983; Henderson and Enterline, 1979; Peto, 1980; Peto *et al.*, 1982; Seidman *et al.*, 1979; Seidman, 1984; Selikoff *et al.*, 1979; Weill *et al.*, 1979.

[15] Baron, 2001; Bolton *et al.*, 2002; Manning *et al.*, 2002; Nicholson, 2001; Osinubi *et al.*, 2000; Roach *et al.*, 2002.

[16] ICRP, 1966; EPA, 1986; West, 2000 and 2003; Manning *et al.*, 2002.

and reported the results as millions of particles per cubic foot of air (mppcf). Most recent studies express the concentration of asbestos as the number of fibers per cubic centimeter (f/cc). Some studies have also reported asbestos concentrations in the number of fibers per milliliter (f/mL), which is an equivalent concentration to f/cc. MSHA's existing PELs for asbestos are expressed in f/mL for metal and nonmetal mines and as f/cc for coal mines. To improve consistency and avoid confusion, MSHA expresses the concentration of asbestos fibers as f/cc in this final rule, for both coal and metal and nonmetal mines.

In the late 1960s, scientists correlated PCM-based fiber counting methods with the earlier types of dust measurements, which provided a means to estimate earlier workers' asbestos exposures and enabled researchers to develop a dose-response relationship with the occurrence of disease. The British Occupational Hygiene Society reported [17] that a worker exposed to 100 fiber-years per cubic centimeter (e.g., 50 years at 2 f/cc, 25 years at 4 f/cc, 10 years at 10 f/cc) would have a 1 percent risk of developing early signs of asbestosis. The correlation of exposure levels with the disease experience of populations of exposed workers provided a basis for setting an occupational exposure limit for asbestos measured by the concentration of the fibers in air.

OSHA (51 FR 22617) applied a conversion factor of 1.4 to convert mppcf, which includes all particles of respirable size, to f/cc, which includes only those particles greater than 5 µm in length with at least a 3:1 aspect ratio. More recently, Hodgson and Darnton (2000) recommended the use of a factor of 3. In reviewing the scientific literature, MSHA did not critically evaluate the impact of these and other conversion factors. MSHA notes this difference here for completeness. MSHA is relying on OSHA's risk assessment and, thus, is using OSHA's conversion factor.

2. Duration of Exposure

The duration of exposure (T) is reported in both epidemiological and toxicological studies, and is generally much shorter in animal studies (*e.g.*, months versus years). In epidemiological studies involving toxic substances that do not have acute health effects, such as asbestos, duration of exposure is typically expressed in years.

3. Cumulative Exposure

When developing dose-response relationships for asbestos-induced health effects, researchers typically use the product of exposure concentration (C in f/cc) and exposure duration (T in years), expressed as fiber-years,[18] to indicate the level of exposure or dose. When summed over all periods of exposure, this measure is called cumulative exposure. Because of the difficulties in obtaining good quantitative exposure assessments, cumulative exposure expressed in fiber-years is often selected as the common metric for the levels of exposures reported in epidemiological studies.

Finkelstein[19] noted that this product of exposure concentration times duration of exposure ($C \times T$) assumes an equal weighting of each variable (C, T). Finkelstein stated further that exposure at a low concentration for a long period of time may be numerically equivalent to exposure at a high concentration for short periods of time; but, they may not be biologically equivalent. What this means is that, in some studies, either concentration or duration of exposure may be more important in predicting disease. For example, in the case of mesothelioma risk following asbestos exposure, Finkelstein [20] concluded that ''* * * duration of exposure may dominate the exposure term * * *''.

4. Fiber Characteristics

Baron (2001) reviewed techniques for the measurement of fibers and stated, ''* * * fiber dose, fiber dimension, and fiber durability are the three primary factors in determining fiber toxicity * * *''. Manning *et al.* (2002) also noted the important roles of bio-persistence (*i.e.*, durability), physical properties, and chemical properties in defining the ''toxicity, pathogenicity, and carcinogenicity'' of asbestos. Roach *et al.* (2002) stated that—

> Physical properties, such as length, diameter, length-to-width (aspect ratio), and texture, and chemical properties are believed to be determinants of fiber distribution [in the body] and disease severity.

Many other investigators [21] also have concluded that the dimensions of asbestos fibers are biologically important.

The NIOSH 7400 analytical method used by MSHA's contract laboratories specifies that analysts count those fibers that are greater than 5 micrometers (microns, µm) in length with a length to diameter aspect ratio of at least 3:1. Several recent publications [22] support this aspect ratio, although larger aspect ratios such as 5:1 or 20:1 have been proposed.[23] There is some evidence that longer, thinner asbestos fibers (*e.g.*, greater than 20 µm long and less than 1 µm in diameter) are more potent carcinogens than shorter fibers. Suzuki and Yuen (2002), however, concluded that ''Short, thin asbestos fibers should be included in the list of fiber types contributing to the induction of human malignant mesotheliomas * * * ''. More recently, Dodson *et al.* (2003) concluded that all lengths of asbestos fibers induce pathological responses and that researchers should exercise caution when excluding a population of inhaled asbestos fibers based on their length.

Researchers have found neither a reliable method for predicting the contribution of fiber length to the development of disease, nor evidence establishing the exact relationship between them. There is suggestive evidence that the dimensions of asbestos fibers may vary with different diseases. A continuum may exist in which shorter, wider fibers produce one disease, such as asbestosis, and longer, thinner fibers produce another, such as mesotheliomas.[24]

Some commenters suggested that MSHA consider additional fiber characteristics, such as durability, in evaluating risk. Some emphasized that not all fibers with the same dimensions will lead to the same disease endpoint. The science is inconclusive on the relationship between the various fiber characteristics and the disease endpoints.[25]

E. MSHA Asbestos Standards

The early PELs for asbestos in mining dropped dramatically as more information on the health effects of asbestos exposure became evident 20 to 30 years (latency period) following its widespread use during the 1940s.

Year	8-hour TWA, Asbestos PEL
1967	5 mppcf (30 f/mL)
1969	2 mppcf (12 f/mL)
1974	5 f/mL for metal and nonmetal mines
1976	2 f/cc for surface areas of coal mines (41 FR 10223)
1978	2 f/mL for metal and nonmetal mines (43 FR 54064)

[17] Lane *et al.*, 1968; OSHA (40 FR 47654), 1975; NIOSH, 1980.

[18] ATSDR, 2001; Fischer *et al.*, 2002; Liddell, 2001; Pohlabeln *et al.*, 2002.

[19] Finkelstein, 1995; ATSDR, p. 42, 2001.

[20] Finkelstein, 1995

[21] ATSDR, 2001; ATSDR, 2003; Osinubi *et al.*, 2000; Peacock *et al.*, 2000; Langer *et al.*, 1979.

[22] ATSDR, 2001; Osinubi *et al.*, 2000.

[23] Wylie *et al.*, 1985.

[24] ATSDR, pp. 39–41, 2001; ATSDR, 2003; Mossman, pp. 47–50, 2003; Kuempel *et al.*, 2006.

[25] Hodgson and Darnton, 2000; Browne, 2001; Liddell, 2001; ATSDR, 2001.

On March 29, 2002 (67 FR 15134), MSHA published an advance notice of proposed rulemaking to obtain public comment on how best to protect miners from exposure to asbestos. MSHA published the proposed rule on July 29, 2005 (70 FR 43950) and held two public hearings in October 2005.

F. OSHA's Asbestos Standards

Like MSHA's, OSHA's 8-hour TWA PEL for occupational exposure to asbestos dropped dramatically over the past several decades.

Year	8-hour TWA Asbestos PEL
1971	12 f/cc
1971	5 f/cc
1972	2 f/cc
1983	0.5 f/cc[26]
1986	0.2 f/cc[27]
1994	0.1 f/cc

In addition, on September 14, 1988, OSHA promulgated an asbestos excursion limit of 1 f/cc over a sampling period of 30 minutes (53 FR 35610).

OSHA's 1986 standards had applied to occupational exposure to both asbestiform and nonasbestiform actinolite, tremolite, and anthophylite. On June 8, 1992, OSHA removed the nonasbestiform types of these minerals from the scope of its asbestos standards (57 FR 24310).

III. Asbestos Exposures in Mines

A. Where Asbestos Is Found at Mines

Asbestos exposure of miners can come from either naturally occurring asbestos in the ore or host rock or from asbestos contained in manufactured products.

1. Metal and Nonmetal Mines

The National Institute for Occupational Safety and Health (NIOSH) and other research organizations and scientists have noted the occurrence of cancers and asbestosis among miners involved in the mining and milling of commodities that contain asbestos.[28] (See Table IV–3.) Although asbestos is no longer mined as a commodity in the United States, veins, pockets, or intrusions of asbestos-containing minerals have been found in other ores in specific geographic regions, primarily in metamorphic or igneous rock.[29] It is possible to find asbestos in sedimentary rock. The U.S. Geological Survey (USGS) has reported weathering or abrasion of asbestos-bearing rock and soil, or air transportation, to carry asbestos to sedimentary deposits.[30] MSHA's experience is that miners may encounter asbestos during the mining of a number of mineral commodities,[31] such as talc, limestone and dolomite, vermiculite, wollastonite, banded ironstone and taconite, lizardite, and antigorite. Even if asbestos contamination is found in a specific mineral commodity, not all mines of that commodity will encounter asbestos and those that do may encounter it rarely. (See Table III–1.)

Mining activities, such as blasting, cutting, crushing, grinding, or simply disturbing the ore or surrounding earth may cause asbestos fibers to become airborne.[32] Milling may transform bulk ore containing asbestos into respirable fibers. Asbestos tends to deposit on workplace surfaces and accumulate during the milling process, which is often in enclosed buildings. The use of equipment and machinery or other activities in these locations may re-suspend the asbestos-containing dust from these surfaces into the air. For this reason, MSHA generally finds higher asbestos concentrations in mills than among mobile equipment operators or in ambient environments, such as pits.

Some mine operators are making an effort to avoid deposits that are likely to contain asbestos minerals. They use knowledge of the geology of the area, core or bulk sample analysis, and workplace examinations (of the pit) to avoid encountering asbestos deposits, thus preventing asbestos contamination of their process stream and final product.[33]

2. Coal Mines

MSHA is aware of only one coal formation in the United States that contains naturally occurring asbestos; however, there is no coal mining in this formation.[34] The more likely exposure to asbestos in coal mining occurs at surface operations from introduced asbestos-containing materials (ACM).

3. Asbestos-Containing Materials (ACM)

Asbestos is a component in some commercial products and may be found as a contaminant in others. The USGS estimates that, during 2006, manufacturers in the United States used about 2,340 metric tons (5.2 million pounds) of asbestos, primarily in roofing products and coatings and compounds. In addition to domestic manufacturing, the United States continues to import products that contain asbestos, primarily cement products, such as flat cement panels, sheets, and tiles.[35]

Although manufacturers have removed the asbestos from many new products,[36] asbestos may still be found at mines. Asbestos-containing building materials (ACBM), such as Transite® board and reinforced cements, could present a hazard during maintenance, construction, remodeling, rehabilitation, or demolition projects. Asbestos in manufactured products, such as electrical insulation, joint and packing compounds, automotive clutch and brake linings,[37] and fireproof protective clothing and welding blankets, could present a hazard during activities at the mine site that may cause a release of fibers.[38] MSHA expects mine operators to determine whether ACM or ACBM are present on mine property by reading the labels or Material Safety Data Sheets (MSDS) required by the OSHA Hazard Communication Standard (29 CFR 1910.1200). The presence of asbestos at a mine indicates that there is a potential for exposure.

B. Sampling Data and Exposure Calculations

To evaluate asbestos exposures in mines, MSHA collects personal exposure samples. MSHA samples a miner's entire work shift using a personal air-sampling pump and a filter-cassette assembly. This assembly is composed of a 50-mm static-reducing, electrically conductive, extension cowl and a 0.8 μm pore size, 25-mm diameter, mixed cellulose ester (MCE) filter. Following standard sampling procedures, MSHA also submits blank filters for analysis.

MSHA collects a sample over the entire time the miner works; 10- to 12-hour shifts are common. The time-weighted average (TWA) PELs in MSHA's standards, however, are based on an 8-hour workday. Regardless of the actual shift length, MSHA calculates a full-shift concentration as if the fibers had been collected over an 8-hour shift. For work schedules less than or greater than 8 hours, this technique allows MSHA to compare a miner's exposure

[26] U.S. Court of Appeals for the 5th Circuit invalidated this rule on March 7, 1984, in *Asbestos Information Association/North America* v. *OSHA* (727 F.2d 415, 1984).

[27] OSHA added specific provisions in the construction standard to cover unique hazards relating to asbestos abatement and demolition jobs.

[28] NIOSH WoRLD, 2003.

[29] MSHA (Bank), 1980; Ross, 1978.

[30] USGS, 1995.

[31] Roggli *et al.*, 2002; Selden *et al.*, 2001; Amandus *et al.*, Part I, 1987; Amandus *et al.*, Part III, 1987; Amandus and Wheeler, Part II, 1987; Meeker *et al.*, 2003.

[32] MSHA (Bank), 1980; Amandus *et al.,* Part I, 1987.

[33] GETF Report, pp. 17–18, 2003; Nolan *et al.,* 1999.

[34] Brownfield *et al.,* 1995.

[35] USGS (Virta), 2007.

[36] GETF Report, pp. 12 and 15, 2003.

[37] Lemen, 2003; Paustenbach *et al.*, 2003.

[38] EPA, 1986; EPA, 1993; EPA, October 2003.

directly to the 8-hour TWA PEL. MSHA calls this calculated equivalent, 8-hour TWA a ''shift-weighted average'' (SWA).

MSHA's existing sampling procedures specify using several, typically three, filter-cassette assemblies in a consecutive series to collect a full-shift sample. For results from both PCM and TEM analyses, MSHA calculates the SWA exposure levels for each miner sampled from the individual filters according to the following formulas.

$SWA = (TWA_1t_1 + TWA_2t_2 + * * * + TWA_nt_n)/480$ minutes

Where:

TWA_n is the time-weighted average concentration for filter ''n'' calculated by dividing the number of fibers (f) collected on the filter by the volume of air (cc) drawn through the filter.

t_n is the duration sampled in minutes for filter ''n''.

Some commenters criticized MSHA's sampling and analytical procedures. A few commenters believed that MSHA should develop specific test procedures for the sampling and analysis of bulk samples for the mining environment, as well as specific air sampling procedures. Some commenters suggested that respirable dust sampling using a cyclone might be a means to remove interfering dust from the sample. NIOSH recommended that thoracic samplers be evaluated in a mining environment. Cyclones and thoracic samplers are not included in MSHA's existing sampling and analytical protocols for asbestos and are not included in existing approved methods. Exposures determined using these devices have not been correlated with the risk assessment that forms the basis of the PELs in the final rule.

Some commenters supported MSHA's existing asbestos monitoring protocols with emphasis on full-shift monitoring for comparison to the PEL. Other commenters stated that MSHA's existing field sampling and analysis methods are adequate for most mines and quarries, particularly when no significant amount of asbestos is found.

Some commenters stated that MSHA should improve its inspection reports by including inspection field notes; sampling location, purpose, and procedure; as well as descriptions of the accuracy, meaning, and limitations of the analytical results. MSHA routinely provides the sampling and analytical results and, when requested, will provide the additional information.

C. Summary of MSHA's Asbestos Air Sampling and Analysis Results

To assess personal exposures and present the Agency's sampling data for January 1, 2000 through May 31, 2007, MSHA calculated an SWA exposure for each miner from the TWA results of individual filters. MSHA has compiled these data into a PowerPoint® slide, and has posted it, together with additional explanatory information, on MSHA's Asbestos Single Source Page at *http://www.msha.gov/asbestos/asbestos.htm*.

MSHA conducted asbestos sampling at 207 mines (206 non-asbestos metal and nonmetal mines and one coal mine) during the period January 1, 2000 through May 31, 2007. Some were sampled multiple times over the seven and one quarter years. MSHA found 29 mines with at least one miner exposed to an equivalent 8-hour TWA (SWA) fiber concentration exceeding 0.1 f/cc. Out of a total of 917 SWA personal full-shift fiber exposure sample results, 113 (12 percent) exceeded 0.1 f/cc using the existing PCM-based analytical screening method.

Further analysis of the 113 samples with TEM confirmed asbestos fiber exposures exceeding 0.1 f/cc in 23 of them. Using the existing TEM-based analytical method, 3 percent of the total number of SWA samples taken exceeded 0.1 asbestos f/cc. Five mines (two taconite, one wollastonite, one sand and gravel, and one olivine), out of the 29 mines potentially impacted by lowering the PEL, had at least one miner with an SWA asbestos fiber exposure exceeding 0.1 f/cc. Although MSHA has no evidence of asbestos exposure above the new PEL in coal mines, the Agency anticipates that some coal mines will encounter asbestos from asbestos containing materials (ACM) brought onto mine property. These operators may have to take corrective action. Table III–1 below summarizes MSHA's asbestos sampling results for the period January 2000 through May 2007.

TABLE III–1.—PERSONAL EXPOSURE SAMPLES AT MINES [1] BY COMMODITY

[1/2000–5/2007]

Commodity	Number of mines sampled	Number (%) of mines with SWA samples >0.1 f/cc by PCM	Number of SWA samples	Number (%) of SWA samples >0.1 f/cc by PCM [2]	Number (%) of SWA samples >0.1 f/cc by TEM
Rock & quarry products [3]	127	11 (9%)	326	20 (6%)	2 (1%)
Vermiculite	4	3 (75%)	149	13 (9%)	0
Wollastonite	1	1 (100%)	18	18 (100%)	9 (50%)
Iron (taconite)	15	5 (33%)	254	43 (17%)	11 (4%)
Talc	12	1 (8%)	38	2 (5%)	0
Alumina [4]	1	0	1	0	0
Feldspar	7	0	[5] 6	0	0
Boron	2	1 (50%)	12	7 (58%)	0
Olivine	2	2 (100%)	9	3 (33%)	1 (11%)
Other [6]	36	[7] 5 (14%)	104	7 (6%)	0
TOTAL	207	[8] 29 (14%)	917	113 (12%)	23 (3%)

[1] Excludes data from an asbestos mine and mill closed in 2003.
[2] MSHA uses TEM to identify asbestos on samples with results exceeding 0.1 f/cc.
[3] Including stone, and sand and gravel mines.
[4] 15-minute sample.
[5] Incomplete SWA at one mine.
[6] Coal, potash, gypsum, cement, perlite, clay, lime, mica, metal ore NOS, shale, pumice, trona, salt, gold, and copper.
[7] Coal, potash, gypsum, cement, and perlite. (Coal and potash exposures were due to fiber release episodes from commercially introduced asbestos).
[8] TEM confirmed airborne asbestos exposures exceeding 0.1 f/cc at five (2%) mines.

The USGS has published a series of maps showing historic asbestos prospects and natural asbestos occurrences in the United States. The USGS published a map covering the eastern states in 2005; the central states in 2006; and the Rocky Mountain states in 2007. These maps served as a guide for the investigation of possible naturally occurring asbestos within the vicinity of mining operations. MSHA found that stone mines and quarries are the predominate types of mining operations in the vicinity of naturally occurring asbestos locations identified on the maps. MSHA conducted fiber sampling at these mines to screen for potential asbestos exposures. The results of the sampling indicated a small degree of asbestos at some of these mining operations, but no widespread asbestos contamination. Although not included on the USGS maps, MSHA also surveyed two mines in El Dorado County, California. Sampling at one of the mines resulted in two personal asbestos exposures greater than 0.1 f/cc, confirmed by TEM analysis, and 2 to 5 percent naturally occurring asbestos in an associated bulk sample. Air sampling at the other mine had low PCM fiber results.

D. Asbestos Take-Home Contamination

The final rule, like the proposal, does not address take-home contamination. In making this decision, MSHA considered its enforcement experience; comments and testimony on the proposal; as well as OSHA, NIOSH, and EPA publications and experience.[39] MSHA based its determination to address asbestos take-home contamination, without promulgating new regulatory provisions, on the following factors:

- There are no asbestos mines or mills currently operating in this country and different ore bodies of the same commodity, such as vermiculite mining, are not consistent in the presence, amount, or dispersion of asbestiform minerals. Based on MSHA's recent enforcement sampling, asbestos exposures in mining are low. (See Table III–1.)
- The measures taken to prevent take-home contamination are varied. Operators may choose the most effective method for eliminating this hazard based on the unique conditions in the mine, including the nature of the hazard. For example, in one situation providing disposable coveralls could minimize or prevent asbestos take-home contamination. Another situation may require on-site shower facilities coupled with clothing changes to provide the same protection.
- Existing standards (e.g., personal protection §§ 56/57.15006; sanitation §§ 56/57.20008, 56/57.20014, 71.400, 71.402; housekeeping §§ 56/57.16003, 56/57.20003, 77.208; appropriate actions §§ 56/57.18002, 56/57.20011, 77.1713; hazard communication 30 CFR 46, 47, and 48), together with lower PELs, provide sufficient enforcement authority to ensure that mine operators take adequate measures when necessary to prevent asbestos take-home contamination.

Commenters urged MSHA to expand the rulemaking to include specific requirements to prevent take-home contamination. NIOSH also encouraged MSHA to adopt measures included in its 1995 Report to Congress on their *Workers' Home Contamination Study Conducted under the Workers' Family Protection Act*. Other commenters, however, supported MSHA's decision and stated that take-home contamination requirements could not be justified at this time.

IV. Application of OSHA's Risk Assessment to Mining

MSHA has determined that OSHA's 1986 asbestos risk assessment (51 FR 22644) is applicable to asbestos exposures in mining. In developing this final rule, MSHA also evaluated studies published since OSHA completed its 1986 risk assessment, and studies that specifically focused on asbestos exposures of miners. These additional studies corroborate OSHA's conclusions in its risk assessment.

A. Summary of OSHA's Risk Assessment

1. Cancer Mortality

In its 1986 risk assessment, OSHA estimated cancer mortality for workers exposed to asbestos at various cumulative exposures (i.e., combining exposure concentration and duration of exposure). MSHA has reproduced this data in Table IV–1. Table IV–1 shows that the estimated mortality from asbestos-related cancer decreases significantly by lowering exposure. This is true regardless of the type of cancer, e.g., lung, pleural or peritoneal mesotheliomas, or gastrointestinal. Although excess relative risk is linear in dose, the excess mortality rates in Table IV–1 are not.[40]

TABLE IV–1.—ESTIMATED ASBESTOS-RELATED CANCER MORTALITY PER 100,000 BY NUMBER OF YEARS EXPOSED AND EXPOSURE LEVEL

Asbestos fiber concentration (f/cc)	Cancer mortality per 100,000 exposed			
	Lung	Mesothelioma	Gastro-intestinal	Total
1-year exposure				
0.1	7.2	6.9	0.7	14.8
0.2	14.4	13.8	1.4	29.6
0.5	36.1	34.6	3.6	74.3
2.0	144	138	14.4	296.4
4.0	288	275	28.8	591.8
5.0	360	344	36.0	740.0
10.0	715	684	71.5	1,470.5
20-year exposure				
0.1	139	73	13.9	225.9
0.2	278	146	27.8	451.8
0.5	692	362	69.2	1,123.2
2.0	2,713	1,408	271.3	4,392.3
4.0	5,278	2,706	527.8	8,511.8

[39] NIOSH (Report to Congress) September 1995.

[40] Nicholson, p. 53, 1983.

TABLE IV–1.—ESTIMATED ASBESTOS-RELATED CANCER MORTALITY PER 100,000 BY NUMBER OF YEARS EXPOSED AND EXPOSURE LEVEL—Continued

Asbestos fiber concentration (f/cc)	Cancer mortality per 100,000 exposed			
	Lung	Mesothelioma	Gastro-intestinal	Total
5.0	6,509	3,317	650.9	10,476.9
10.0	12,177	6,024	1,217.7	13,996.7
45-year exposure				
0.1	231	82	23.1	336.1
0.2	460	164	46.0	670.0
0.5	1,143	407	114.3	1,664.3
2.0	4,416	1,554	441.6	6,411.6
4.0	8,441	2,924	844.1	12,209.1
5.0	10,318	3,547	1,031.8	14,896.8
10.0	18,515	6,141	1,851.5	26,507.5

Table IV–1 shows that, by lowering the PEL from 2 f/cc to 0.1 f/cc, the risk of cancer mortality drops 95 percent from an estimated 6,411 to 336 deaths (per 100,000 workers).

2. Asbestosis

Finkelstein (1982) studied a group of 201 men who worked in a factory in Ontario, Canada, that manufactured asbestos-cement pipe and rock-wool insulation. Finkelstein demonstrated that there was a relationship between cumulative asbestos exposure and confirmed asbestosis.

Berry and Lewinsohn (1979) studied a group of 379 men who worked in an asbestos textile factory in northern England. Berry and Lewinsohn (1979) defined two different cohorts: Men who were first employed before 1951, when asbestos fiber levels were estimated; and men first employed after 1950, when asbestos fiber levels were measured. They plotted cases of possible asbestosis to determine a dose response curve.

OSHA stated that ''* * * the best estimates of asbestosis incidence are derived from the Finkelstein data * * *'' (48 FR 51132). OSHA did not rely on the values for the slope as determined by Berry and Lewinsohn (1979). Based on Finkelstein's (1982) linear relationship for lifetime asbestosis incidence, OSHA calculated estimates of lifetime asbestosis incidence at five exposure levels of asbestos (i.e., 0.5, 1, 2, 5, and 10 f/cc) and published its estimate in tabular form (48 FR 51132). MSHA has reproduced OSHA's estimates in Table IV–2 below. OSHA stated (51 FR 22646) that ''Reducing the exposure to 0.2 f/cc, a concentration not included in Table IV–2, would result in a lifetime incidence of asbestosis of 0.5%.''

TABLE IV–2.—ESTIMATES OF LIFETIME ASBESTOSIS INCIDENCE [41]

Exposure level, f/cc	Percent (%) Incidence		
	Finkelstein	Berry and Lewinsohn (employed before 1951)	Berry and Lewinsohn (first employed after 1950)
0.5	1.24	0.45	0.35
1	2.49	0.89	0.69
2	4.97	1.79	1.38
5	12.43	4.46	*3.45
10	24.86	8.93	6.93
Slope	0.055	0.020	0.015
R^2	0.975	0.901	0.994

*Note: 1.38 in original table was a typographical error. The text (48 FR 51132) and the regression formula indicate that 3.45 is the correct percent.

Similar to the cancer risk, Table IV–2 shows a significant reduction in the incidence of asbestosis by lowering asbestos exposures. MSHA calculated the incidence of asbestosis following 45 years of exposure to asbestos at a concentration of 0.1 f/cc, which OSHA had not included in Table IV–1, to be 0.25 percent or 250 cases per 100,000 workers. Thus, by lowering the 8-hour TWA PEL from 2 f/cc to 0.1 f/cc, MSHA will reduce the lifetime asbestosis risk by 95 percent from an estimated 4,970 cases to 250 cases (per 100,000 workers).

B. Risk Assessment for the Mining Industry

OSHA stated in the preamble to its 1986 asbestos rule that it excluded mining studies in its risk assessment because it believed that risks in the asbestos mining-milling operations are lower than other industrial operations due to differences in fiber size (51 FR 22637). MSHA reviewed the studies OSHA used to develop its risk assessment.[42] In addition, MSHA obtained and reviewed the latest available scientific studies on the health

[41] Finkelstein, 1982; Berry and Lewinsohn, 1979.

[42] Berry and Newhouse, 1983; Dement *et al.*, 1982; Finkelstein, 1983; Henderson and Enterline, 1979; Peto, 1980; Peto *et al.*, 1982; Seidman *et al.*, 1979; Seidman, 1984; Selikoff *et al.*, 1979; Weill *et al.*, 1979.

effects of asbestos exposure. MSHA recognizes that there are uncertainties in any risk assessment. MSHA concluded, however, that these studies provide further support of the significant risk of adverse health effects following exposure to asbestos.

MSHA reviewed the mining studies described in OSHA's asbestos risk assessment, as well as other studies that involved the exposure of miners to asbestos. Most of these studies were conducted in Canada, although some have been conducted in Australia, India, Italy, South Africa, and the United States. Table IV–3 lists some of these mining studies, in chronological order, and gives the salient features of each study. These studies are in MSHA's rulemaking docket.

TABLE IV.–3—SELECTED STUDIES INVOLVING MINERS EXPOSED TO ASBESTOS

Author(s), year of publication	Study group, type of asbestos	Major finding(s) or conclusion(s)
Rossiter *et al.*, 1972	Canadian miners and millers, Chrysotile	Radiographic changes (opacities) related to age and exposure.
Becklake, 1979	Canadian miners and millers, Chrysotile	Weak relationship between exposure and disease.
Gibbs and du Toit, 1979	Canadian and South African miners, Chrysotile.	Need for workplace epidemiologic surveillance and environmental programs.
Irwig *et al.*, 1979	South African miners, Amosite and Crocidolite	Parenchymal radiographic abnormalities preventable by reduced exposure.
McDonald and Liddell, 1979	Canadian miners and millers, Chrysotile	Lower risk of mesotheliomas and lung cancer from chrysotile than crocidolite.
Nicholson *et al.*, 1979	Canadian miners and millers, Chrysotile	Miners and millers: at lower risk of mesotheliomas, at risk of asbestosis (as factory workers and insulators), at risk of lung cancer (as factory workers).
Rubino *et al.*, Ann NY Ac Sci 1979.	Italian miners, Chrysotile	Role of individual susceptibility in appearance and progression of asbestosis.
Rubino *et al.*, Br J Ind Med 1979.	Italian miners, Chrysotile	Elevated risk of lung cancer.
Solomon *et al.*, 1979	South African miners, Amosite and Crocidolite	Sign of exposure to asbestos: thickened interlobar fissures.
McDonald *et al.*, 1980	Canadian miners and millers, Chrysotile	No statistically significant increases in SMRs.
McDonald *et al.*, 1986	U.S. miners, Tremolite.	A. Increased risk of mortality from respiratory cancer.
McDonald *et al.*, 1986	U.S. miners, Tremolite	B. Increased prevalence of small opacities by retirement age.
Cookson *et al.*, 1986	Australian miners and millers, Crocidolite	No threshold dose for development of radiographic abnormality.
Amandus *et al.*, 1987	U.S. miners and millers, Tremolite-Actinolite	Part I: Exposures below 1 f/cc after 1977, up to 100–200 × higher in 1960's and 1970's.
Amandus and Wheeler, 1987	U.S. miners and millers, Tremolite-Actinolite	Part II: Increased mortality from nonmalignant respiratory disease and lung cancer.
Amandus *et al.*, 1987	U.S. miners and millers, Tremolite-Actinolite	Part III: Increased prevalence of radiographic abnormalities associated with past exposure.
Armstrong *et al.*, 1988	Australian miners and millers, Crocidolite	Increased mortality from mesotheliomas and lung cancer.
Enarson *et al.*, 1988	Canadian miners, Chrysotile	Increased cough, breathlessness, abnormal lung volume and capacity.
McDonald *et al.*, 1988	U.S. miners and millers, Tremolite	Low exposure and no statistically significant SMRs.
McDonald *et al.*, 1993	Canadian miners and millers, Chrysotile	Increased SMRs for lung cancer and mesotheliomas as cohort aged.
Dave *et al.*, 1996	Indian miners and millers, Chrysotile	Higher exposures in surface than underground mines; higher exposures in mills than mines; restrictive lung impairment and radiologic parenchymal changes more common in millers.
McDonald *et al.*, 1997	Canadian miners and millers, Chrysotile	Risk of mesotheliomas related to geography and mineralogy of region; mesotheliomas caused by amphiboles.
Nayebzadeh *et al.*, 2001	Canadian miners and millers, Chrysotile	Respiratory disease related to regional differences in fiber concentration and not dimension.
Ramanathan and Subramanian, 2001.	Indian miners and millers, Chrysotile and tremolite.	Increased risk of cancer, restrictive lung disease, radiologic changes, and breathing difficulties; more common in milling.
Bagatin *et al.*, 2005	Brazilian miners and millers, Chrysotile	Decreased risk of non-malignant abnormalities with improvements in workplace conditions.
Nayebzadeh *et al.*, 2006	Canadian miners and millers, Chrysotile, Tremolite, Amosite.	Possible use of lung fiber concentration, especially short tremolite fibers, to predict fibrosis grade.
Sullivan, 2007	U.S. miners, millers, and processors, Tremolite.	Increased mortality from asbestosis, cancer of the pleura, and lung cancer that were dose-related.

MSHA found that many of the observations presented in these mining studies (e.g., age of first exposure, latency, radiologic changes) are consistent with those from the studies OSHA relied on in its risk assessment, as well as studies of other asbestos-exposed factory and insulation workers. MSHA concludes that exposure to asbestos, a known human carcinogen, results in similar disease endpoints regardless of the occupation that has been studied. Because there is evidence of asbestos-related disease among miners, MSHA is applying the OSHA risk assessment to the mining industry.

Some commenters stated that there is a differential health risk related to fiber type and that OSHA's risk assessment is not adequate or appropriate for the mining industry. The OSHA risk assessment addresses adverse health effects from exposure to six asbestos minerals. MSHA applies TEM analysis

to its PCM results to determine exposure to these same six asbestos minerals. Exposure of miners to these asbestos minerals, at the same concentrations and length of exposures as workers in other industries, can be expected to result in the same disease endpoints as quantified in OSHA's risk assessment. (See section II.C and II.D of this preamble and chapter III of the REA.)

Some commenters also expressed concern regarding the health risks of fibrous minerals that are not currently regulated under MSHA's existing standards and suggested that MSHA conduct a new risk assessment to include them. MSHA considered these comments and determined that a new risk assessment is not necessary for this final rule, since fibrous minerals that are not currently regulated under MSHA's existing standards are beyond the scope of this rulemaking.

Some commenters stressed the lack of asbestos-related disease among miners in studies conducted at gold, taconite, and talc operations where there was asbestos contamination in the ore. In developing this final rule, MSHA considered a number of environmental and epidemiological studies conducted at mining operations. These studies demonstrated adverse health effects among miners consistent with exposure to asbestos in other workers. Researchers have found excessive incidence of asbestos-related disease in miners at a vermiculite mining operation.[43] Studies of talc miners have shown excess lung cancer and non-malignant respiratory disease.[44] Researchers are now studying excessive mesotheliomas among iron miners in northeastern Minnesota to determine the source of the asbestos exposure.

Section VI of this preamble contains a summary of MSHA's findings from applying OSHA's quantitative assessment of risk to the mining industry. MSHA's *Regulatory Economic Analysis* (REA) contains a more in-depth discussion of the Agency's methodology and conclusions. MSHA placed the REA in the rulemaking docket and posted it on the Asbestos Single Source Page at *http://www.msha.gov/asbestos/asbestos.htm*. MSHA also placed OSHA's risk assessment in its rulemaking docket.

C. Characterization of the Risk to Miners

After reviewing the evidence of adverse health effects associated with exposure to asbestos, MSHA evaluated that evidence to ascertain whether exposure levels currently existing in mines warrant regulatory action. The criteria for this evaluation are established by the Federal Mine Safety and Health Act of 1977 (Mine Act) and related court decisions.[45]

Section 101(a) of the Mine Act requires MSHA '' * * * to develop, promulgate, and revise * * * improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.'' Further, section 101(a)(6)(A) provides that—

> The Secretary, in promulgating mandatory standards dealing with toxic materials or harmful physical agents under this subsection, shall set standards which most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Section 101(a)(6)(A) also requires that MSHA base its health and safety standards on ''* * * the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.'' As discussed in section VI.B, a 0.1 f/cc TWA PEL for asbestos is technologically and economically feasible.

Based on court interpretations of similar language under the Occupational Safety and Health Act, MSHA has addressed the following three questions:

(1) Do the health effects associated with asbestos exposure constitute a ''material impairment'' to miner health or functional capacity? Miners exposed to asbestos are at risk of developing lung cancer, mesotheliomas, and other cancers, as well as asbestosis and other nonmalignant respiratory diseases.[46] These health effects constitute a ''material impairment of health or functional capacity.''

(2) Are exposed miners at significant risk of incurring any of these material impairments? Based on OSHA's risk assessment, MSHA has determined that a significant health risk exists for miners exposed to asbestos at MSHA's existing 8-hour TWA PEL of 2 f/cc. Over a 45-year working life, exposure at this level can be expected to result in a 6.4 percent incidence of cancer (lung cancer, mesotheliomas, and gastrointestinal cancer) and a 5.0 percent incidence of asbestosis.

(3) Will this final rule substantially reduce such risks? By lowering the 8-hour TWA PEL to 0.1 f/cc, MSHA will reduce the risk of asbestos-related cancers from 6.4 percent to 0.34 percent and the risk of asbestosis from 5.0 percent to 0.25 percent. MSHA considers this reduction to be substantial.

V. Section-by-Section Analysis of Final Rule

The final rule is substantively the same as the proposed rule. To make the standard easier to read, however, MSHA has divided the requirements in the final standards into three paragraphs: *Definitions, Permissible Exposure Limits (PELs), and Measurement of Airborne Fiber Concentration*. For §§ 56/57.5001(b), the metal and nonmetal asbestos standards, MSHA designated the paragraphs (b)(1), (b)(2), and (b)(3). For § 71.702, the coal asbestos standard, MSHA designated the paragraphs (a), (b), and (c).

A. §§ 56/57.5001(b)(1) and 71.702(a): Definitions

The final rule, like the proposal, makes no substantive changes to the definition of asbestos in MSHA's existing standards. MSHA's existing definition of asbestos is consistent with the regulatory provisions of several Federal agencies including EPA, OSHA, and CPSC, among others. Asbestos is not a definitive mineral, but rather a generic name for a group of minerals with specific characteristics. MSHA's existing standards state that, ''when crushed or processed, [asbestos] separates into flexible fibers made up of fibrils'' [§§ 56/57.5001(b)]; and ''does not include nonfibrous or nonasbestiform minerals'' (§ 71.702). Although there are many asbestiform minerals,[47] the term asbestos in MSHA's existing standards and this final rule is limited to the following six:[48]

- Chrysotile (serpentine asbestos, white asbestos).
- Cummingtonite-grunerite asbestos (amosite, brown asbestos).
- Crocidolite (riebeckite asbestos, blue asbestos).
- Anthophylite asbestos (asbestiform anthophyllite).
- Tremolite asbestos (asbestiform tremolite).
- Actinolite asbestos (asbestiform actinolite).

Like the proposal, the final rule makes several clarifying changes to the existing regulatory language. They have no impact on the minerals that MSHA regulates as asbestos. This more precise

[43] Sullivan, 2007.

[44] NIOSH (HETA/MHETA), 1990; NIOSH (Technical Report), 1980.

[45] *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607, 100 S.Ct. 2844 (1980) (''Benzene case'')

[46] American Thoracic Society, 2004; Delpierre *et al.*, 2002.

[47] Leake *et al.*, 1997; Meeker *et al.*, 2003.

[48] ATSDR, p.136, 2001; NIOSH Pocket Guide, 2003.

language will facilitate mine operators' understanding of the scope of the standard. This final asbestos rule—

- Clarifies that *cummingtonite-grunerite asbestos* is the mineralogical term for *amosite*, a trade name for asbestos from a specific geographical region;
- Clarifies that MSHA's definition of *fiber* for analytical purposes includes the same dimensional criteria as in the existing standards, which are consistent with OSHA's asbestos standard; and
- Clarifies the asbestos standard by inserting uniform structure and language.

Some commenters suggested that MSHA should expand its definition of asbestos to include other asbestiform minerals, so long as MSHA's analytical method excluded the counting of cleavage fragments. Another commenter asked that MSHA not include nonasbestiform fibrous minerals and mineral cleavage fragments when MSHA performs microscopic analyses of samples. Others supported the inclusion and regulation of asbestiform amphiboles that have shown or are likely to show asbestos-like health effects.

Many commenters did not want MSHA to make changes to the fibers regulated as asbestos in the existing standards. Specifically, they did not want MSHA to address other asbestiform amphiboles found in mineral deposits because there is no evidence that these fibers pose the same health problems that asbestos does. Some said that it would be unreasonable and expensive to try to meet exposure limits for all these other asbestiform minerals. Other commenters stated that, whatever they are called, asbestiform minerals cause illness.

As stated throughout this rulemaking, the final rule makes no substantive changes to the definition of asbestos in MSHA's existing standards. Such changes were not contemplated in the proposed rule and, therefore, are beyond the scope of this final rule.

B. Sections 56/57.5001(b)(2) and 71.702(b): Permissible Exposure Limits (PELs)

1. Sections 56/57.5001(b)(2)(i) and 71.702(b)(1): 8-Hour, Time-Weighted Average (TWA), Full-Shift Permissible Exposure Limit

The final rule adopts OSHA's 8-hour TWA PEL of 0.1 f/cc. No commenters objected to this aspect of the proposal.

Asbestos occurs naturally in many types of ore bodies and may be released from mine sites into the environment; but, MSHA's sampling results indicate that there is not widespread overexposure to asbestos in the mining industry at this time. MSHA's sampling data for 2000 through May 2007 show that 3 percent of MSHA's full-shift asbestos samples exceed OSHA's TWA PEL of 0.1 f/cc using a TEM-based analysis.

Commenters expressed concern about potential asbestos exposure of those living close to a mining operation. Although MSHA's reduction of its asbestos PELs may reduce environmental levels, other Federal, State, and local agencies have jurisdiction over environmental exposures.

2. Sections 56/57.5001(b)(2)(ii) and 71.702(b)(2): Excursion Limit

The final rule, like the proposal, adopts OSHA's excursion PEL of 1 f/cc as measured over 30 minutes. Some commenters were concerned that an excursion limit is not enforceable and, therefore, should be removed from the rule. Although MSHA may not always be present to take air samples to evaluate a miner's exposure during brief episodes of asbestos exposure, existing §§ 56/57.5002 and 71.701 require mine operators to conduct sampling to determine the need for, and effectiveness of, control measures when miners may be exposed to asbestos.

An excursion limit sets levels, not based on toxicological data, for peak episodes of exposure. As previously discussed, asbestos poses a long-term health risk to exposed workers. Although the final rule will substantially reduce the risk of asbestos-related deaths from a lifetime exposure, it does not completely eliminate this risk. The excursion limit will help reduce the long-term risk by addressing brief, episodic exposures. This type of episodic exposure can be foreseen and proactively controlled by the use of personal protective equipment (respirators and protective clothing) and by implementing engineering or work practice controls (glove boxes, tents, wet methods).

The final rule includes an excursion limit for asbestos to help maintain the average airborne concentration below the full-shift exposure limit. For example, for miners exposed to one 30-minute excursion per day at 1 f/cc, the 8-hour TWA airborne asbestos concentration would be 0.06 f/cc, which is less than the 0.1 f/cc 8-hour TWA PEL. For miners exposed to two 30-minute excursions per day at 1 f/cc, the 8-hour TWA airborne asbestos concentration would be 0.13 f/cc, which exceeds the 0.1 f/cc 8-hour TWA PEL.

One commenter urged MSHA to retain 15 minutes, rather than switch to 30 minutes, as the sampling period for enforcement of the excursion limit. As shown in Table V–1 below, the excursion limit of 1 f/cc for 30 minutes is the lowest concentration that MSHA can measure reliably for determining compliance with the excursion limit. MSHA recognizes that in some situations, such as low background dust levels, lower exposures could be measured by using a higher flow rate; but, the risk of overloading the filter with debris increases when using higher flow rates. MSHA can be confident that it is measuring the actual airborne concentrations of asbestos, within a standard sampling and analytical error (±25 percent), when the Agency uses the minimum loading suggested by the OSHA Reference Method (29 CFR 1910.1001, Appendix A).

As discussed in OSHA's 1986 asbestos final rule (51 FR 22686), the key factor in sampling precision is fiber loading. To determine whether the analytical method described in Appendix A of its asbestos standard could be used to analyze short-term samples, OSHA calculated the lowest reliable limit of quantification using the following formula:

$$C = [(f/[(n)(A_f)])(A_c)]/[(V)(1{,}000)]$$

Where:

C = fiber concentration (in f/cc of air);
f = the total fiber count;
n = the number of microscope fields examined;
A_f = the field area (0.00785 mm^2) for a properly calibrated Walton-Beckett graticule;
A_c = the effective area of the filter (in mm^2); and
V = the sample volume (liters).

Table V–1 was generated from the above equation. The table shows that 1 f/cc measured over 30 minutes can be reliably measured when pumps are used at the higher flow rates of 1.6 Lpm or more, using 25-mm filters. The table also shows that MSHA cannot reliably measure 1 f/cc with 15-minute air samples, even when they are collected at the higher pump flow rates.

TABLE V–1.—RELATIONSHIP OF SAMPLING METHOD TO MEASUREMENT OF ASBESTOS

Sampling time and flow rate	Lowest level reliably measured using 25-mm filters
15 min at 2.5 Lpm	1.05 f/cc.
15 min at 2.0 Lpm	1.31 f/cc.
15 min at 1.6 Lpm	1.63 f/cc.
15 min at 1.0 Lpm	2.61 f/cc.
15 min at 0.5 Lpm	5.23 f/cc.
30 min at 2.5 Lpm	0.51 f/cc.
30 min at 2.0 Lpm	0.65 f/cc.
30 min at 1.6 Lpm	0.82 f/cc.
30 min at 1.0 Lpm	1.31 f/cc.
30 min at 0.5 Lpm	2.61 f/cc.

After evaluating the comments, MSHA retains the proposed asbestos excursion limit of 1 f/cc over a period of 30 minutes in the final rule.

C. Sections 56/57.5001(b)(3) and 71.702(c): Measurement of Airborne Fiber Concentrations

The final rule, like the proposed rule, requires an initial determination of fiber concentration using a PCM-based analytical method statistically equivalent to the OSHA Reference Method in OSHA's asbestos standard (29 CFR 1910.1001, Appendix A).

With respect to analytical methods, the final rule is substantively the same as MSHA's existing standards. PCM-based analytical methods were used in the development of past exposure assessments and risk estimates, and are relatively quick and cost-effective. OSHA used a PCM-based methodology as the defining basis of its asbestos risk assessment. PCM-based analytical methods remain the most practical way to evaluate asbestos exposures in mining. MSHA recognizes, however, that all analytical methods, including those used to identify and quantify the six asbestos minerals regulated by MSHA have limitations. Analysts have quantified the limits of detection, precision, and accuracy of these methods, termed ''analytical error;'' and MSHA includes this analytical error in evaluating asbestos exposures and enforcing the PELs. As discussed below, comments varied on MSHA's proposed sampling and analytical techniques. Most commenters supported a combination of PCM-based and TEM-based techniques for evaluating mine air samples.

1. Background of Analytical Method for Asbestos

Historically, asbestos samples have been analyzed by mass (weighing), counting (microscopy), or a qualitative property (spectroscopy). When recommending an exposure standard for chrysotile asbestos, the British Occupational Hygiene Society said [49] that the microscopic counting of particles greater than 5 µm in length would show a relationship with the prevalence of asbestosis similar to those studies based on the mass of respirable asbestos. Many studies have suggested that counting only fibers longer than 5 µm minimizes variations between microscopy techniques [50] and improves the precision of the results.[51] The scientific community accepted this length together with a minimum 3:1 length to diameter aspect ratio, as the counting criteria for asbestos fibers that provides an index of asbestos exposure, even though some believed that shorter fibers should be included due to their possible health effects.[52] Acceptance of PCM-based methodology has served as the basis of asbestos risk assessments.

In recommending an asbestos standard in 1972 and 1976, NIOSH suggested using the same size criteria that the British adopted. They also recommended reevaluating these criteria when more definitive information on the biologic response and precise epidemiologic data are developed. NIOSH applied a conversion factor to exposure data not obtained using a PCM-based analytical method, to estimate what the exposure data would have been using a PCM-based method. This conversion allowed NIOSH to use non-PCM-based exposure data, together with PCM-based exposure data, in determining a recommended permissible exposure level.

2. MSHA's Analytical Methods for Enforcement of Its Asbestos PELs

Prior to 2001, OSHA analyzed MSHA's asbestos samples using OSHA ID–160, a PCM-based analytical method. Since 2001, MSHA has contracted with American Industrial Hygiene Association (AIHA) accredited laboratories to analyze its asbestos samples using NIOSH's PCM-based analytical method, and to follow up with an analysis using NIOSH's TEM-based method when the PCM results indicate an exposure exceeding 0.1 f/cc. These commercial laboratories report analytical results as the fiber concentration (f/cc) for each filter analyzed.

Several factors complicate the evaluation of personal exposure levels in mining environments. For example, non-asbestos fibers and dust particles collected on the filter can obscure the asbestos fibers or overload the filter. Depending on the amount of visible dust in the air, MSHA's sampling procedures allow the setting of pump flow rates and consecutive sampling to minimize or eliminate mixed dust overload.

Commenters criticized MSHA's use of PCM-based methods to evaluate asbestos exposures. Several recommended that MSHA adopt a new ASTM method (ASTM D 7200–06), which references the characteristics of asbestiform fibers in EPA's bulk sample method.[53] Many recommended that MSHA not conduct air sampling unless prior bulk sampling had identified asbestos fibers. Some commenters recommended that the final rule include a TEM-based analytical method for the initial determination of compliance.

Bulk sampling presents limitations. The presence of asbestos in a bulk sample does not mean that it poses a hazard. The asbestos must become airborne and be respirable, or contaminate food or water, to pose a health hazard to miners. Analysis of bulk samples is usually performed using polarized light microscopy (PLM). A particle must be at least 0.5 µm in diameter to refract light and many asbestos fibers are too thin to refract light. Asbestos may be a small percentage of the parent material or not uniformly dispersed in the sample and,

[49] Lane *et al.*, 1968.

[50] ACGIH–AIHA, 1975.

[51] Wylie, 2000.

[52] ACGIH–AIHA, 1975; NIOSH, 1972.

[53] ASTM, 2006; EPA, 1993.

therefore, may not be seen in the small portion of sample that is examined under the microscope. Another problem with identifying asbestos using PLM is that both the asbestiform and nonasbestiform varieties of a mineral show the same refractive index. Although a trained individual may be able to identify bulk asbestos by its appearance and physical properties, the identification can be difficult when the asbestos is dispersed in a dust sample or is present in low concentration in a rock.

Due to a lack of consensus in the regulatory and scientific communities, revisions to MSHA's use of PCM-based analytical methods were not included within the scope of this rulemaking. If PCM-based analysis reveals a potential overexposure, MSHA will perform a TEM-based analysis to confirm asbestos exposure levels. Further, MSHA will consider the use of alternative analytical methods for the measurement of airborne asbestos that meet the analytical equivalency criteria for OSHA's Reference Method once they are recognized by a laboratory accreditation organization. For example, NIOSH is supporting an ASTM inter-laboratory study to validate whether ASTM D7200–06, ''Standard Practice for Sampling and Counting Airborne Fibers, Including Asbestos Fibers, in Mines and Quarries, by Phase Contrast Microscopy and Transmission Electron Microscopy'' can meet the OSHA equivalency criteria and be accredited.

a. Discussion of Microscope Properties.

One issue commenters mentioned concerning PCM-based analytical methods is the limited resolution and magnification of light microscopes compared to electron microscopes. The resolution of the microscope is the smallest separation between two objects that will allow them to be distinctly visible. The higher the resolving power of a microscope, the smaller the distance can be between two particles and have them still appear as two distinct particles. Resolution is about 0.2 μm using PCM compared with 0.0002 μm using TEM. This means that an analyst who sees a single fiber using PCM may see a number of thinner fibers using TEM. Individual fibrils of chrysotile are about 0.05 μm in diameter while amphibole fibrils are about 0.1 μm in diameter. Using TEM, the analyst is able to see thinner fibers and, therefore, should be able to see more fibers than when using PCM.

Magnification is the ratio of the size that the object appears under the microscope to its actual size. A PCM-based analysis of air samples for asbestos typically uses a magnification of 400 to 450 times (×) the object's actual size. In contrast, a TEM-based analysis typically uses a magnification of 10,000×. As a result, an analyst using PCM sees a larger amount of the sample than one using TEM, although in less detail.

b. Variability in Counting Asbestos Fibers Using PCM.

Commenters generally supported MSHA's use of a PCM-based analytical method for the initial analysis of fiber samples for determining compliance. One of the commenters' major concerns focused on the variability of fiber counting procedures. MSHA understands that the PCM-based analytical methods yield considerable variability in counting fibers because it is dependent on a number of related variables, such as the optical performance of the microscope, the optical properties of the prepared sample, and the proportion of fine particles.[54]

OSHA recognized the variability of using a PCM-based analytical method in its rulemaking. The requirements listed at 29 CFR 1910.1001 Appendix A minimize the effect of the known variability by describing the essential steps of a generic sampling and analytical procedure. OSHA also established criteria to limit variability. Subsequently, other papers have addressed variability issues related to PCM counting techniques.[55]

Commenters suggested a number of techniques to reduce the variability in counting fibers on mine air samples. Some asked that MSHA consider respirable or thoracic sampling to minimize interference from large particles that can obscure asbestos fibers on the filter. Some supported a counting technique based on the typical characteristics of asbestos in air. Others recommended using a higher aspect ratio to increase the probability that the structures counted are fibers. Another commenter stated that several approaches have been tried to remove non-asbestos minerals from samples, such as low temperature ashing or dissolution, but these approaches are not useful for mining samples. Many commenters suggested the development of differential counting techniques that consider the fiber morphology and the distributions or populations of distinct fiber groups with characteristic dimensions to analyze mine air samples for fibers. Other commenters stated that particle characteristics could not be used reliably to differentiate fibers from cleavage fragments when examining relatively small numbers of fibers. Several commenters suggested the development of a new analytical method for asbestos in mine air samples.

Much of the variability in counting asbestos is attributed to the visual acuity of the analyst in observing and sizing fibers and in interpreting the counting rules.[56] Overall, commenters recognized that it takes far less time to develop expertise in counting fibers using PCM than in developing expertise using TEM. NIOSH has developed a 40-hour training course for analysts as an adequate prerequisite to conducting total fiber counts using PCM. To differentially count asbestos fibers, an analyst must have advanced knowledge of mineralogy and expertise in the microscopic techniques used. This knowledge and expertise can be gained only by years of experience counting fiber samples collected in a variety of environments.

The availability of analyst training courses, and the formation of accreditation bodies requiring laboratory quality assurance programs, helps minimize the variations in measurements between and within laboratories.[57] Accreditation bodies require laboratories to use standardized analytical methods. AIHA has the Asbestos Analyst Registry that specifies criteria for competence, education, and performance for analysts. In addition to these programs, MSHA's incorporation of OSHA's Appendix A helps minimize the subjectivity and increase consistency of measuring airborne asbestos concentrations by specifying core elements of an acceptable PCM-based analytical method.

3. MSHA's Incorporation of Appendix A of OSHA's Asbestos Standard

MSHA's existing standards include basic elements of PCM-based analytical methods. These same basic elements for asbestos exposure monitoring are included in the OSHA Reference Method in Appendix A of OSHA's asbestos standard. The evaluation or inclusion of methods that do not include these basic elements or that deviate from the criteria for counting fibers in MSHA's existing standards was not contemplated in the proposed rule and, therefore, is beyond the scope of this final rule.

OSHA's Appendix A, the OSHA Reference Method (ORM), specifies the elements of an acceptable analytical method for asbestos and the quality

[54] Rooker *et al.*, 1982.

[55] Pang, 2000; Harper and Bartolucci, 2003.

[56] Rooker *et al.*, 1982.

[57] Schlect and Shulman, 1995.

control procedures that laboratories performing the analysis must implement. To encourage innovation and technological advancement, the final rule allows for MSHA's acceptance of other analytical methods that are at least as effective in identifying potential asbestos overexposures as the OSHA Reference Method (29 CFR 1910.1001, Appendix A). MSHA considers the counting criteria for a fiber in the OSHA Reference Method to be statistically equivalent to that in MSHA's definition of a fiber.

For the purpose of this final rule, MSHA considers a method to be statistically equivalent to the ORM and at least as effective as MSHA's existing method if it meets the following criteria from 29 CFR 1910.1001(d)(6)(iii):

(A) Replicate exposure data used to establish equivalency are collected in side-by-side field and laboratory comparisons; and

(B) The comparison indicates that 90% of the samples collected in the range 0.5 to 2.0 times the permissible limit have an accuracy range of plus or minus 25 percent of the ORM results at a 95% confidence level as demonstrated by a statistically valid protocol; and

(C) The equivalent method is documented and the results of the comparison testing are maintained.

Although MSHA can calculate concentrations below 0.1 f/cc, neither NIOSH 7400 nor OSHA ID 160 sampling and analytical methods obtain statistically reliable, repeatable measurements within ± 25 percent of the mean with 95 percent confidence for concentrations lower than 0.1 f/cc. The preamble to OSHA's 1994 asbestos rule (59 FR 40967) states that 0.1 f/cc is ''the practical lower limit of feasibility for measuring asbestos levels reliably.''

Appendix A lists NIOSH 7400 and OSHA ID–160 as analytical methods that meet these equivalency criteria. MSHA will consider other analytical methods that afford an equivalent measurement alternative as they become available.

4. Epidemiological Studies and Health Risk Data Based on PCM Analytical Methods

A number of commenters pointed out that a PCM-based methodology counts more than asbestos. These commenters suggested that the lower risk seen in epidemiological studies relating PCM-based exposure estimates to adverse health outcomes in miners was due to the other material inherent in air samples taken in a mining environment. They speculated that non-asbestos dust particles had been counted and included in the estimated concentrations, which would have overestimated asbestos exposures. MSHA acknowledges the possible overestimation of asbestos-related disease in applying OSHA's risk assessment to mining exposures based solely on PCM analytical results. For this reason, by policy, MSHA uses a subsequent TEM analysis to identify asbestos minerals and minimize this overestimation when determining asbestos exposures. MSHA has not found sufficient information to make a ''differential risk'' determination for the mining industry within OSHA's quantitative risk assessment, which MSHA uses as the basis for this final rule.

5. Discussion of Cleavage Fragments and Non-Asbestos Minerals

During this rulemaking, MSHA has received many comments regarding cleavage fragments. MSHA has not addressed cleavage fragments in this final rule. To do so would require a change in both the analytical method and the definition of asbestos, neither of which were contemplated in the proposed rule and are, therefore, beyond the scope of this final rule. The final rule retains MSHA's PCM-based analytical method. To minimize the impact of cleavage fragments on sampling results, however, MSHA will continue its policy of conducting a subsequent TEM-based analysis on samples with PCM results that exceed the PEL.

Many commenters expressed concern that standard phase contrast counting techniques are not specific in determining exposure to only the six Federal asbestos minerals and may misidentify cleavage fragments as asbestos fibers. PCM-based analytical methods do not distinguish between asbestos and any other fiber meeting the size and aspect ratio criteria. A number of commenters highlighted the seeming contradiction between MSHA's stated intent to exclude cleavage fragments from the standard and the Agency's selection of a PCM-based analytical method that may identify elongated amphibole cleavage fragments as asbestos fibers.

Commenters suggested several ways to eliminate cleavage fragments. For example, some suggested that MSHA use a revised PCM-based method with differential counting criteria that referenced OSHA's 29 CFR 1910.1001 Appendices B and C.[58] Others suggested a proposed ASTM method, which was adopted in June 2006 (ASTM D 7200–06). Several recommended a fiber population analysis that examined samples for the characteristics of commercial asbestos listed in Appendix A of EPA's *Method for the Determination of Asbestos in Bulk Building Materials* (EPA, 1993).

MSHA acknowledges that PCM-based analytical methods for the quantitative analysis of asbestos samples have some limitations, especially if samples are collected in a mixed dust environment. PCM-based analysis, however, addresses the key problem of needing to make a relatively fast, cost-effective evaluation of miners' work environments so as to improve their health protection. Using a PCM-based analytical method maintains the usefulness of the analytical results relative to the historic health data.[59] When an exposure exceeds the full-shift or excursion PEL, MSHA uses a TEM-based method to confirm the presence of asbestos.

D. § 71.701(c) and (d): Sampling; General Requirements (Controlling Asbestos Exposures in Coal Mines)

This final rule retains the proposed revision to add a reference to § 71.702 in paragraphs (c) and (d) of § 71.701 to clarify MSHA's intent that coal mine operators control miners' exposures to asbestos. MSHA received no substantive comments on this proposed change.

VI. Regulatory Analyses

A. Executive Order (E.O.) 12866

Executive Order (E.O.) 12866 (58 FR 51735) as amended by E.O. 13258 (Amending Executive Order 12866 on Regulatory Planning and Review (67 FR 9385)) requires regulatory agencies to assess both the costs and benefits of regulations. To comply with Executive Order 12866, MSHA has prepared a Regulatory Economic Analysis (REA) for this final rule. The REA contains supporting data and explanation for the summary materials presented in section VI of this preamble, including the covered mining industry, costs and benefits, feasibility, and small business impact. The REA is located on MSHA's Web site at *http://www.msha.gov/regsinfo.htm*. A copy of the REA can be obtained from MSHA's Office of Standards, Regulations, and Variances.

Executive Order 12866 classifies a rule as a significant regulatory action

[58] Appendix B (non-mandatory) is a detailed procedure for asbestos sampling and analysis. OSHA removed Appendix C (mandatory), which specified qualitative and quantitative fit testing procedures, when they promulgated their respiratory protection standard (29 CFR 1910.134). Given the context of the comment, MSHA thinks the commenter may have been referring to Appendix J, OSHA's PLM analytical method.

[59] Wylie *et al.*, 1985.

requiring review by the Office of Management and Budget if it has an annual effect on the economy of $100 million or more; creates a serious inconsistency or interferes with an action of another agency; materially alters the budgetary impact of entitlements or the rights of entitlement recipients; or raises novel legal or policy issues. MSHA has determined that the final rule would not have an annual effect of $100 million or more on the economy and, therefore, it is not an economically ''significant regulatory action'' pursuant to section 3(f) of E.O. 12866. MSHA, however, has concluded that the proposed rule is otherwise significant under Executive Order 12866 because it raises novel legal or policy issues.

1. Discussion of Benefits

This final rule will reduce diseases arising from exposure to asbestos, and the associated costs to employers, miners' families, and society at large. Exposure to asbestos can cause lung cancer; mesothelioma; gastrointestinal cancer; cancers of the larynx, pharynx, and kidneys; asbestosis; and other respiratory diseases. Reduced miners' exposures will reduce adverse health effects both in terms of the incidence of disease affecting quality of life, and deaths from both cancer and non-cancer disease. These asbestos-related diseases cause a material impairment of human health or functional capacity.

This benefit analysis quantifies the reduction in expected deaths to miners resulting from reduced exposure to airborne asbestos. The benefit is a result of reducing the 8-hour time-weighted average (TWA) permissible exposure limit (PEL) from 2 fibers per cubic centimeter (f/cc) to 0.1 f/cc. MSHA acknowledges that this change will not eliminate the risk of asbestos-related material impairment of health. (See Table IV–1.)

a. Summary of Benefits.

By lowering the PEL to 0.1 f/cc, MSHA estimates the prevention of one occupationally related cancer death caused by asbestos exposure over the 55-year period beginning 10 years after implementation of the final rule. MSHA estimates that there will be benefits resulting from lowering the excursion limit, but is unable to quantify these benefits. This analysis underestimates the total benefits of the rule by quantifying only the cancer deaths prevented. The benefits do not include the reduced incidence of asbestosis-related disabilities.

b. Calculation of Premature Deaths Prevented.

MSHA limits the quantified benefits to an estimation of the number of cancer cases prevented. MSHA expresses the results as ''deaths prevented'' because the cancers associated with asbestos exposure almost always result in premature death.

The benefits resulting from a reduction in the PEL depend on several factors including—

- Existing and projected exposure levels,
- Risk associated with each exposure level,
- Number of workers exposed at each exposure level, and
- Age of the miner at first exposure.

MSHA estimated the number of miners currently exposed and their levels of exposure from data on personal exposure sampling during regular and special inspections between January 2000 and May 2007. These data are available on MSHA's Web site at *http://www.msha.gov.* Section III of this preamble contains the characterization and assessment of exposures in mining.

Laboratory results indicate that exposure concentrations are unevenly distributed across mines and among miners within mines. MSHA uses four fiber concentration levels to estimate the risk to miners. The break points for these exposure levels are the existing and final exposure limits as follows: Less than 0.1 f/cc, 0.1 to less than 1 f/cc, 1 f/cc to less than 2 f/cc, and 2 f/cc or greater. Approximately 86 percent of MSHA's PCM-based fiber sampling results are below 0.1 f/cc. Approximately 97 percent of MSHA's TEM-based asbestos sampling results are below 0.1 f/cc. Based on MSHA's sampling data, concentrations ranged between 0.0 and 38.1 f/cc over these years. The highest concentration level in Table IV–1 is 10 f/cc. MSHA's calculations, therefore, use an upper exposure limit of 10 f/cc. Samples with exposure concentrations above 10 f/cc are included in this benefits analysis as 10 f/cc. MSHA's estimated benefits derive totally from the mines MSHA has sampled.

MSHA applied OSHA's linear, no-threshold, dose-response risk assessment model to MSHA's existing PEL and final PEL to estimate the expected number of asbestos-related deaths. The expected reduction of deaths resulting from lowering the PEL will be the difference between the expected deaths at 2 f/cc and 0.1 f/cc.[60] MSHA then applied these rates to the estimated number of miners exposed at the corresponding concentration based on MSHA sampling data. The result is an estimate of miners' deaths resulting from cancer due to occupational exposure to asbestos under existing exposure conditions.

c. Benefits of the 0.1 f/cc PEL.

Deaths from lung cancer, mesotheliomas, gastrointestinal cancer, and asbestosis are the result of past exposures to much higher air concentrations of asbestos than those found in mines today. The risks of these diseases still exist, however, and these risks are significant for miners exposed to lower air concentrations of asbestos. Most diseases resulting from a more recent asbestos exposure may not become evident for another 20 to 30 years. When the results of TEM analysis are incorporated into the exposure data, MSHA estimated a reduction of one cancer death (per 314 miners exposed above 0.1 f/cc, or 5 per 1,000 exposed) over a 55-year period starting 10 years after implementation of the lower 8-hour TWA PEL. This represents a 12 percent reduction in the miners' asbestos-related deaths that would be expected if existing exposures were to continue. The rate at which the incidence of the cancers decreases depends on several factors including—

- Latency of onset of cancer,
- Attrition of the mining workforce,
- Changing rates of competing causes of death,
- Dynamics of other risk factors,
- Changes in life expectancy, and
- Advances in cancer treatments.

d. Benefits of the 1 f/cc Excursion Limit.

The intended effect of the excursion limit is to protect miners from the adverse health risks associated with brief fiber releases. MSHA believes that miners will be exposed to brief fiber releases even when airborne concentrations of asbestos do not exceed the PEL. For example, mechanics may be inadvertently exposed to airborne asbestos while working on older equipment that may have asbestos-containing parts. Miners may encounter brief fiber releases while drilling, dozing, blasting, or roof bolting in areas of naturally occurring asbestos. These short-term exposures can easily be above 1 f/cc; however, when averaged over an 8-hour shift, they fall within the 0.1 f/cc PEL. However, because MSHA does not have sufficient data regarding the relationship between the frequency of brief fiber releases and adverse health risks, this analysis demonstrates the theoretical benefits from limiting short-term exposures to the excursion limit.

This section estimates the benefits of the excursion limit of 1 f/cc for one 30-

[60] Nicholson, 1983; JRB Associates, 1983; OSHA (51 FR 22612), 1986; OSHA (53 FR 35609), 1988; OSHA (59 FR 40964), 1994.

minute period per day. Two 30-minute exposures per day at 1 f/cc will exceed the 8-hour TWA, full shift exposure limit (i.e., 1 f/cc for 48 minutes = 0.1 f/cc for 480 minutes).

MSHA estimates the benefit of an excursion limit from the difference in concentration between the PEL and the excursion limit averaged over the full shift [(1 f/cc)/(16 30-minute periods) = 0.063 f/cc]. The lifetime risk associated with an exposure to 0.1 f/cc is 0.00336, if first exposed at age 25 and exposure continues every work day at that level for 45 years. The risk associated with exposure to 0.063 f/cc using the same age and duration of exposure is 0.00212. The difference in lifetime risk is 0.00124, which equates to one additional premature death prevented for every 1,000 miners exposed to asbestos above the 1 f/cc excursion limit.

2. Discussion of Costs

The final rule will result in total costs of approximately $201,000 per year for all mines. The cost will be approximately $156,000 for metal and nonmetal mines and approximately $45,000 for coal mines. These costs represent less than 0.001 percent of the yearly revenues of $64.4 billion for the metal and nonmetal mining industry and $27.0 billion for the coal mining industry.

Table VI–1 presents MSHA's estimate of the total yearly compliance costs by compliance strategy and mine size. The total costs reported are projected costs, in 2006 dollars, based on MSHA's knowledge, experience, and available information.

TABLE VI–1.—SUMMARY OF YEARLY COMPLIANCE COSTS

Metal and nonmetal mine size	Compliance strategy				Total for metal and nonmetal mines
	Selective mining	Wet methods	Ventilation	Removal of ACM	
1–19	$2,417	$2,820	$1,619	$1,750	$8,606
20–500	11,242	19,673	28,048	21,000	79,962
501+	3,747	6,558	41,278	15,750	67,333
Total	17,406	29,050	70,945	38,500	155,901
Coal mine size	**Compliance strategy**				**Total for coal mines**
	Selective mining	Wet methods	Ventilation	Removal of ACM	
1–19				$875	$875
20–500				12,250	12,250
501+				31,500	31,500
Total				44,625	44,625

B. Feasibility

MSHA has determined that the requirements of this final rule are both technologically and economically feasible.

In the discussion of PELs in section V.B of this preamble, MSHA stated that there is a residual risk of adverse health effects for miners exposed at the PEL. MSHA considered proposing a lower PEL as a regulatory alternative to further reduce the risk of adverse health effects from a working lifetime of exposure. When OSHA reduced the PEL from 0.2 to 0.1 f/cc in 1994, OSHA concluded that this concentration is ''the practical lower limit of feasibility for measuring asbestos levels reliably.'' (59 FR 40967) About 85 percent of the sampled mines are already in compliance with the 0.1 f/cc PEL.

This final rule is not a technology-forcing standard. All equipment required by the final rule and a variety of dust control strategies and control methods are already available in the marketplace and have been used successfully by the U.S. mining community to control asbestos exposures. MSHA has concluded that this final rule is technologically feasible.

The mining industry would incur costs of about $201,000 yearly to comply with this final rule. These compliance costs represent less than 0.001 percent of the yearly revenues of the mines covered by this rule (approximately $64.4 billion for metal and nonmetal and $27.0 billion for coal). MSHA has concluded that this final rule is economically feasible.

D. Regulatory Flexibility Analysis (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Based on MSHA's data and experience, and information submitted to the record, the Agency has determined and here certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The REA for this final rule (RIN: 1219–AB24), *Asbestos Exposure Limit,* contains the factual basis for this certification as well as complete details about data, equations, and methods used to calculate the costs and benefits. MSHA has placed the REA in the rulemaking docket and posted it on MSHA's Web site at *http://www.msha.gov.*

E. Other Regulatory Considerations

1. The National Environmental Policy Act of 1969 (NEPA)

MSHA has reviewed the final rule in accordance with the requirements of NEPA of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11) and has assessed the environmental impacts. The Agency found that the final rule will have no significant impact on air, water, or soil quality; plant or animal life; the use of land; or other aspects of the human environment.

2. Paperwork Reduction Act of 1995

The final rule contains no information collection or recordkeeping requirements. Thus, there are no additional paperwork burden hours and related costs associated with the final rule. Accordingly, the Paperwork Reduction Act requires no further agency action or analysis.

3. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform

Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that the final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor does it increase private sector expenditures by more than $100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

4. Treasury and General Government Appropriations Act of 1999 (Section 654: Assessment of Impact of Federal Regulations and Policies on Families)

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that the final rule will have no affect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. Accordingly, MSHA certifies that the final rule will not impact family well-being.

5. Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights

The final rule does not implement a policy with takings implications. Accordingly, E.O. 12630 requires no further Agency action or analysis.

6. Executive Order 12988: Civil Justice Reform

The final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, the final rule meets the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

7. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The final rule has no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

8. Executive Order 13132: Federalism

The final rule does not have ''federalism implications,'' because it does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

9. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

The final rule does not have ''tribal implications,'' because it 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.'' Accordingly, under E.O. 13175, no further Agency action or analysis is required.

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

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution or use. MSHA has reviewed the final rule for its energy effects because the final rule applies to the coal mining sector. MSHA has concluded that the final rule is not a significant energy action because it will not have significant adverse effect on the supply, distribution, or use of energy. Further, because the final rule will result in yearly costs of approximately $45,000 to the coal mining industry, relative to annual revenues of $27.0 billion in 2006, it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

11. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

MSHA has thoroughly reviewed the final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section VI.D of this preamble, MSHA has determined and certified that the final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, requires no further agency action or analysis.

VII. Copy of the OSHA Reference Method (ORM)

MSHA's existing asbestos standards require that the analyst determine fiber concentrations using a phase contrast microscopy analytical method with 400–450X magnification. The ORM contains these requirements. The definition of fiber in MSHA's final rule includes the same characteristics as in the existing standards, i.e., longer than 5 μm with a length to width ratio of at least 3:1. Although the ORM requires counting fibers 5 μm or longer, there is no practical difference between these criteria considering the accuracy and precision of the analytical methods. NIOSH Method 7400 is equivalent to the ORM even though it requires counting fibers longer than 5 μm. The ORM also requires that analysts ''* * * must have taken the NIOSH course for sampling and evaluating airborne asbestos dust or an equivalent course.''

29 CFR 1910.1001 Appendix A: OSHA Reference Method—Mandatory

This mandatory appendix specifies the procedure for analyzing air samples for asbestos and specifies quality control procedures that must be implemented by laboratories performing the analysis. The sampling and analytical methods described below represent the elements of the available monitoring methods (such as Appendix B of their regulation, the most current version of the OSHA method ID–160, or the most current version of the NIOSH Method 7400). All employers who are required to conduct air monitoring under paragraph (d) of the [OSHA] standard are required to utilize analytical laboratories that use this procedure, or an equivalent method, for collecting and analyzing samples.

Sampling and Analytical Procedure.

1. The sampling medium for air samples shall be mixed cellulose ester filter membranes. These shall be designated by the manufacturer as suitable for asbestos counting. See below for rejection of blanks.

2. The preferred collection device shall be the 25-mm diameter cassette with an open-faced 50-mm electrically conductive extension cowl. The 37-mm cassette may be used if necessary but only if written justification for the need to use the 37-mm filter cassette accompanies the sample results in the employee's exposure monitoring record. Do not reuse or reload cassettes for asbestos sample collection.

3. An air flow rate between 0.5 liter/min and 2.5 liters/min shall be selected for the 25-mm cassette. If the 37-mm cassette is used, an air flow rate between 1 liter/min and 2.5 liters/min shall be selected.

4. Where possible, a sufficient air volume for each air sample shall be collected to yield between 100 and 1,300 fibers per square millimeter on the membrane filter. If a filter darkens in appearance or if loose dust is seen on the filter, a second sample shall be started.

5. Ship the samples in a rigid container with sufficient packing material to prevent

dislodging the collected fibers. Packing material that has a high electrostatic charge on its surface (e.g., expanded polystyrene) cannot be used because such material can cause loss of fibers to the sides of the cassette.

6. Calibrate each personal sampling pump before and after use with a representative filter cassette installed between the pump and the calibration devices.

7. Personal samples shall be taken in the ''breathing zone'' of the employee (i.e., attached to or near the collar or lapel near the worker's face).

8. Fiber counts shall be made by positive phase contrast using a microscope with an 8 to 10 × eyepiece and a 40 to 45 × objective for a total magnification of approximately 400 × and a numerical aperture of 0.65 to 0.75. The microscope shall also be fitted with a green or blue filter.

9. The microscope shall be fitted with a Walton-Beckett eyepiece graticule calibrated for a field diameter of 100 micrometers (±2 micrometers).

10. The phase-shift detection limit of the microscope shall be about 3 degrees measured using the HSE phase shift test slide as outlined below.

a. Place the test slide on the microscope stage and center it under the phase objective.

b. Bring the blocks of grooved lines into focus.

Note: The slide consists of seven sets of grooved lines (ca. 20 grooves to each block) in descending order of visibility from sets 1 to 7, 7 being the least visible. The requirements for asbestos counting are that the microscope optics must resolve the grooved lines in set 3 completely, although they may appear somewhat faint, and that the grooved lines in sets 6 and 7 must be invisible. Sets 4 and 5 must be at least partially visible but may vary slightly in visibility between microscopes. A microscope that fails to meet these requirements has either too low or too high a resolution to be used for asbestos counting.

c. If the image deteriorates, clean and adjust the microscope optics. If the problem persists, consult the microscope manufacturer.

11. Each set of samples taken will include 10 percent blanks or a minimum of 2 field blanks. These blanks must come from the same lot as the filters used for sample collection. The field blank results shall be averaged and subtracted from the analytical results before reporting. A set consists of any sample or group of samples for which an evaluation for this standard must be made. Any samples represented by a field blank having a fiber count in excess of the detection limit of the method being used shall be rejected.

12. The samples shall be mounted by the acetone/triacetin method or a method with an equivalent index of refraction and similar clarity.

13. Observe the following counting rules.

a. Count only fibers equal to or longer than 5 micrometers. Measure the length of curved fibers along the curve.

b. In the absence of other information, count all particles as asbestos that have a length-to-width ratio (aspect ratio) of 3:1 or greater.

c. Fibers lying entirely within the boundary of the Walton-Beckett graticule field shall receive a count of 1. Fibers crossing the boundary once, having one end within the circle, shall receive the count of one half (½). Do not count any fiber that crosses the graticule boundary more than once. Reject and do not count any other fibers even though they may be visible outside the graticule area.

d. Count bundles of fibers as one fiber unless individual fibers can be identified by observing both ends of an individual fiber.

e. Count enough graticule fields to yield 100 fibers. Count a minimum of 20 fields; stop counting at 100 fields regardless of fiber count.

14. Blind recounts shall be conducted at the rate of 10 percent.

Quality Control Procedures.

1. *Intralaboratory program.* Each laboratory and/or each company with more than one microscopist counting slides shall establish a statistically designed quality assurance program involving blind recounts and comparisons between microscopists to monitor the variability of counting by each microscopist and between microscopists. In a company with more than one laboratory, the program shall include all laboratories and shall also evaluate the laboratory-to-laboratory variability.

2. *Interlaboratory program.*

a. Each laboratory analyzing asbestos samples for compliance determination shall implement an interlaboratory quality assurance program that as a minimum includes participation of at least two other independent laboratories. Each laboratory shall participate in round robin testing at least once every 6 months with at least all the other laboratories in its interlaboratory quality assurance group. Each laboratory shall submit slides typical of its own work load for use in this program. The round robin shall be designed and results analyzed using appropriate statistical methodology.

b. All laboratories should also participate in a national sample testing scheme such as the Proficiency Analytical Testing Program (PAT), or the Asbestos Registry sponsored by the American Industrial Hygiene Association (AIHA).

3. All individuals performing asbestos analysis must have taken the NIOSH course for sampling and evaluating airborne asbestos dust or an equivalent course.

4. When the use of different microscopes contributes to differences between counters and laboratories, the effect of the different microscope shall be evaluated and the microscope shall be replaced, as necessary.

5. Current results of these quality assurance programs shall be posted in each laboratory to keep the microscopists informed.

[57 FR 24330, June 8, 1992; 59 FR 40964, Aug. 10, 1994]

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List of Subjects

30 CFR Parts 56 and 57

Air quality, Asbestos, Chemicals, Hazardous substances, Metals, Mine safety and health.

30 CFR Part 71

Air quality, Asbestos, Chemicals, Coal mining, Hazardous substances, Mine safety and health.

Dated: February 22, 2008.

Richard E. Stickler,

Acting Assistant Secretary for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is amending chapter I of title 30 of the Code of Federal Regulations as follows.

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Section 56.5001 is amended by revising paragraph (b) to read as follows:

§ 56.5001 Exposure limits for airborne contaminants.

* * * * *

(b) *Asbestos standard*—(1) *Definitions.* Asbestos is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. As used in this part—

Asbestos means chrysotile, cummingtonite-grunerite asbestos (amosite), crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Fiber means a particle longer than 5 micrometers (μm) with a length-to-diameter ratio of at least 3-to-1.

(2) *Permissible Exposure Limits (PELs)*—(i) *Full-shift limit.* A miner's personal exposure to asbestos shall not exceed an 8-hour time-weighted average full-shift airborne concentration of 0.1 fiber per cubic centimeter of air (f/cc).

(ii) *Excursion limit.* No miner shall be exposed at any time to airborne concentrations of asbestos in excess of 1 fiber per cubic centimeter of air (f/cc) as averaged over a sampling period of 30 minutes.

(3) *Measurement of airborne fiber concentration.* Fiber concentration shall be determined by phase contrast microscopy using a method statistically equivalent to the OSHA Reference Method in OSHA's asbestos standard found in 29 CFR 1910.1001, Appendix A.

* * * * *

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

■ 3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 4. Section 57.5001 is amended by revising paragraph (b) to read as follows:

§ 57.5001 Exposure limits for airborne contaminants.

* * * * *

(b) *Asbestos standard*—(1) *Definitions.* Asbestos is a generic term

for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. As used in this part—

Asbestos means chrysotile, cummingtonite-grunerite asbestos (amosite), crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Fiber means a particle longer than 5 micrometers (μm) with a length-to-diameter ratio of at least 3-to-1.

(2) *Permissible Exposure Limits (PELs)*—(i) *Full-shift limit.* A miner's personal exposure to asbestos shall not exceed an 8-hour time-weighted average full-shift airborne concentration of 0.1 fiber per cubic centimeter of air (f/cc).

(ii) *Excursion limit.* No miner shall be exposed at any time to airborne concentrations of asbestos in excess of 1 fiber per cubic centimeter of air (f/cc) as averaged over a sampling period of 30 minutes.

(3) *Measurement of airborne fiber concentration.* Fiber concentration shall be determined by phase contrast microscopy using a method statistically equivalent to the OSHA Reference Method in OSHA's asbestos standard found in 29 CFR 1910.1001, Appendix A.

* * * * *

PART 71—MANDATORY HEALTH STANDARDS—SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811, 951, 957.

■ 6. Section 71.701 is amended by revising paragraphs (c) and (d) to read as follows:

§ 71.701 Sampling; general requirements.

* * * * *

(c) Where concentrations of airborne contaminants in excess of the applicable threshold limit values, permissible exposure limits, or permissible excursions are known by the operator to exist in a surface installation or at a surface worksite, the operator shall immediately provide necessary control measures to assure compliance with § 71.700 or § 71.702, as applicable.

(d) Where the operator has reasonable grounds to believe that concentrations of airborne contaminants in excess of the applicable threshold limit values, permissible exposure limits, or permissible excursions exist, or are likely to exist, the operator shall promptly conduct appropriate air sampling tests to determine the concentration of any airborne contaminant which may be present and immediately provide the necessary control measures to assure compliance with § 71.700 or § 71.702, as applicable.

■ 7. Section 71.702 is revised to read as follows:

§ 71.702 Asbestos standard.

(a) *Definitions.* Asbestos is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. As used in this part—

Asbestos means chrysotile, cummingtonite-grunerite asbestos (amosite), crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Fiber means a particle longer than 5 micrometers (μm) with a length-to-diameter ratio of at least 3-to-1.

(b) *Permissible Exposure Limits (PELs)*— (1) *Full-shift limit.* A miner's personal exposure to asbestos shall not exceed an 8-hour time-weighted average full-shift airborne concentration of 0.1 fiber per cubic centimeter of air (f/cc).

(2) *Excursion limit.* No miner shall be exposed at any time to airborne concentrations of asbestos in excess of 1 fiber per cubic centimeter of air (f/cc) as averaged over a sampling period of 30 minutes.

(c) *Measurement of airborne fiber concentration.* Fiber concentration shall be determined by phase contrast microscopy using a method statistically equivalent to the OSHA Reference Method in OSHA's asbestos standard found in 29 CFR 1910.1001, Appendix A.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area; published 2-29-08

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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 "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4253/P.L. 110–186

Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Feb. 14, 2008; 122 Stat. 623)

H.R. 3541/P.L. 110–187

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