AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

5–16–08 Friday
Vol. 73 No. 96 May 16, 2008

Pages 28319–28698

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.* -

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 73 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

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

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, May 20, 2008
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 73, No. 96

Friday, May 16, 2008

Agency for International Development
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28424

Agricultural Marketing Service
RULES
Livestock Mandatory Reporting:
Reestablishment and Revision of the Reporting Regulation for Swine, Cattle, Lamb, and Boxed Beef, 28606–28662
NOTICES
Standards for Grades of Frozen Okra, 28424

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Importation of Baby Squash and Baby Courgettes from Zambia, 28372–28377
Importation of Horses, Ruminants, Swine, and Dogs:
Remove Panama from Lists of Regions Where Screwworm is Considered to Exist, 28382–28385
Importation of Tomatoes from Souss-Massa, Morocco, 28377–28382

Antitrust Division
NOTICES
Cooperative Research and Production Act of 1993; Semiconductor Test Consortium, Inc., 28508
National Cooperative Research snd Production Act of 1993 OPENSAF Foundation, 28508

Army Department
See Engineers Corps

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28478–28479
Meetings:
Advisory Council for the Elimination of Tuberculosis, 28479–28480
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 28480
Healthcare Infection Control Practices Advisory Committee, 28480
Statement of Organization, Functions, and Delegations of Authority, 28480–28484

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare Program:
Revisions to the Medicare Advantage and Prescription Drug Benefit Program, 28556–28604
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28484

Coast Guard
RULES
Security Zone:
Portland Rose Festival on Willamette River, 28321

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Addition to and Deletions from the Procurement List, 28428
Proposed Additions to the Procurement List, 28428–28429

Comptroller of the Currency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28551–28552

Corporation for National and Community Service
NOTICES
Meetings; Sunshine Act, 28436–28437

Defense Department
See Engineers Corps
PROPOSED RULES
Federal Acquisition Regulation:
Contractor Compliance Program and Integrity Reporting, 28407–28410

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28509–28510
Solicitation for Grant Applications; Availability of Funds:
Demonstration Projects Targeting Dislocated Workers, 28510–28528

Energy Department
See Federal Energy Regulatory Commission
See National Nuclear Security Administration
PROPOSED RULES
Assistance Regulations, 28385–28391
NOTICES
Intent to Prepare an Environmental Impact Statement, etc.:
Santa Susana Field Laboratory, 28437–28441
Meetings:
Environmental Management Site-Specific Advisory Board; Idaho National Laboratory, 28441

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Middle Harbor Redevelopment Project of the Port of Long Beach, Los Angeles County, CA, 28437

Environmental Protection Agency

RULES

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM2.5), 28321–28350

PROPOSED RULES

Pesticide Inert Ingredient:
  Proposal to Revoke the Obsolete Tolerance Exemption for Sperm Oil, 28391–28394

NOTICES

Draft National Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activities, 28454–28459
Environmental Impacts Statements; Availability, etc.:
  Weekly Receipt, 28461
Environmental Impact Statements; Availability, etc.:
  EPA Comments, 28459–28461
Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities, 28461–28465
Receipt of Petition:
  Massachusetts Marine Sanitation Device Standard, 28465–28466
Registration Applications:
  Pesticide Products, 28466–28468
Sulfluramid; Product Cancellation Order, 28468–28469

Federal Aviation Administration

RULES

Amendment of Class E Airspace: Waynesburg, PA, 28320–28321

NOTICES

Petition for Exemption; Summary of Petition Received, 28546–28547
Petitions for Exemption; Summary of Petitions Received, 28547–28548

Federal Communications Commission

RULES

Promoting Diversification of Ownership in the Broadcasting Services, 28361–28370

PROPOSED RULES

Promoting Diversification of Ownership in the Broadcasting Services, 28400–28407

Federal Emergency Management Agency

RULES

Assistance Program Under the 9/11 Heroes Stamp Act (2001), 28357–28361
Flood Elevation Determinations, 28350–28357

PROPOSED RULES

Proposed Flood Elevation Determinations, 28394–28400

NOTICES

Use of Digital Flood Data, 28491–28492

Federal Energy Regulatory Commission

NOTICES

Application Accepted for Filing and Soliciting Motions to Intervene and Protests:
  Salvatore and Michelle Shifrin, 28441–28442
Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests:
  Bear Swamp Power Co. LLC, 28442–28443
Application Tendered for Filing With the Commission, etc.:
  Fire Mountain Lodge, 28443–28444
Application to Amend Authorization:
  Florida Gas Transmission Co., LLC, 28444
Combined Notice of Filings, 28444–28446
Environmental Assessment; Availability:
  Boise-Kuna Irrigation District, et al., 28446
  Natural Gas Pipeline Company of America; Proposed Herscher-Galesville Expansion Project, 28446–28447
  Virginia Electric & Power Co., 28447
Exempt Wholesale Generators Status:
  Wheatfield Wind Power Project LLC, et al., 28447
Filing:
  Midwest Independent Transmission System Operator, Inc. et al., 28447–28448
  New York Independent System Operator, Inc., 28448
  Public Service Company of Colorado, 28448
  Southern Company Services, Inc., 28448–28449
  Taylor, G. Tom, 28449
  Wagoner, Gregory E., 28449
Issuance of Order:
  Shell Energy North America (U.S.), L.P., 28449–28450
  Standard Binghamton LLC, 28450
Limited Scoping for Ohio Storage Expansion Project:
  Columbia Gas Transmission Corp., 28450–28451
Request Under Blanket Authorization:
  Equitrans, L.P., 28451
  Northern Natural Gas Co., 28451–28452
  Tennessee Gas Pipeline Co., 28452
  Transcontinental Gas Pipe Line Corporation, 28452–28453
Supplemental Notice of Initial Electric Market-Based Rate Authorization Filings etc.; Revised Treatment, 28453

Federal Reserve System

RULES

Availability of Funds and Collection of Checks, 28319–28320

Fish and Wildlife Service

PROPOSED RULES

Endangered and Threatened Wildlife and Plants:
  Proposed Removal of Erigeron Maguirei from the Federal List of Endangered and Threatened Plants; Availability of Post-Delisting Monitoring Plan, 28410–28423

NOTICES

Draft Bexar County Karst Invertebrates Recovery Plan, 28494–28495
East Bay Municipal Utility District Habitat Conservation Plan, East Bay Watershed Lands, Alameda and Contra Costa Counties, CA, 28495–28497
Regional Habitat Conservation Plan, Hays County, TX, 28497–28498
Williamson County Regional Habitat Conservation Plan, 28498–28499

Food and Drug Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28484–28488

Foreign-Trade Zones Board

NOTICES

Application for Expansion:
  Foreign-Trade Zone 102, St. Louis County, MO, 28429
Application for Reorganization and Expansion:
  Foreign-Trade Zone 176, Rockford, IL, 28429–28430
  Foreign-Trade Zone 30, Salt Lake City, UT, 28430
Application for Subzone Status:
  Foreign-Trade Zone 167, Brown County, WI, 28430–28431

Forest Service
NOTICES
Environmental Impact Statement; Intent to Prepare:
Gateway West 230/500 kV Transmission Line Project; Idaho and Wyoming, etc., 28425–28426
Environmental Statements; Availability, etc.:
Deschutes & Ochoco National Forests, Deschutes, Crook, Jefferson, Klamath, Grant and Lake Counties, OR, 28426–28428

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation:
Contractor Compliance Program and Integrity Reporting, 28407–28410

Geological Survey
NOTICES
Meetings:
National Geospatial Advisory Committee, 28500

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28469–28471
Hospital Preparedness Program (HPP), 28471–28472
Program Reporting and Accountability Changes to the Hospital Preparedness Program, 28472–28478

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 28494
Notice of Funding Opportunity (NOFA) for HOME Investment Partnership:
Competitive Reallocation of CHDO Funds to Provide for Energy Efficient and Environmentally-Friendly Housing for Low-Income Families, 28664–28697

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
NOTICES
Meetings:
Art Advisory Panel, 28552–28553

International Trade Administration
NOTICES
Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review:
Certain Lined Paper Products from India, 28431
Extension of Time Limits for Final Results of Antidumping Duty Administrative Review:
Hand Trucks and Certain Parts Thereof from the People's Republic of China, 28431–28432

International Trade Commission
NOTICES
Investigation Determination:
1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) from China and India, 28507
Frontseating Service Valves from China, 28507–28508

Justice Department
See Antitrust Division

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 28500
Environmental Impact Statement; Intent to Prepare:
Gateway West 230/500 kV Transmission Line Project; Idaho and Wyoming, etc., 28425–28426
Planning Criteria for Programmatic Environmental Impact Statement:
Leasing of Geothermal Resources, 28500–28502

Minerals Management Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28502–28504

Mine Safety and Health Administration
NOTICES
Petitions for Modification, 28528–28530

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation:
Contractor Compliance Program and Integrity Reporting, 28407–28410
NOTICES
Meetings:
NASA International Space Station Advisory Committee, 28531–28532

National Highway Traffic Safety Administration
RULES
Vehicle Identification Number Requirements; Correction, 28370–28371
NOTICES
Petition for Exemption from the Vehicle Theft Prevention Standard:
smart USA Distributor LLC, 28548–28549

National Institute of Standards and Technology
NOTICES
Interpretation of the International System of Units (the Metric System of Measurement) for the United States, 28432–28433
Meetings:
Judges Panel of the Malcolm Baldrige National Quality Award, 28433

National Institutes of Health
NOTICES
Meetings:
Board of Scientific Counselors, National Institute of Dental and Craniofacial Research, 28488
Center for Scientific Review, 28488–28489
Center for Scientific Review Special Emphasis Panel, 28488–28490
National Institute of Child Health and Human Development, 28490–28491
National Institute of Dental and Craniofacial Research Special Emphasis Panel, 28490
National Institute of Mental Health Special Emphasis Panel, 28491

National Nuclear Security Administration
NOTICES
Environmental Statements; Availability, etc.:
Los Alamos National Laboratory, Los Alamos, NM, 28453–28454

National Oceanic and Atmospheric Administration
NOTICES
Codeless and Semi-Codeless Access to the Global Positioning System, 28433–28435
Meetings:
Gulf of Mexico Fishery Management Council, 28435
Permits:
Foreign Fishing, 28435–28436
Receipt of Application:
Marine Mammals (File No. 13392), 28436

National Park Service
NOTICES
Meetings:
Boston Harbor Islands National Recreation Area Advisory Council, 28504–28505
Chesapeake and Ohio Canal National Historical Park Advisory Commission, 28505
National Park System Advisory Board, 28505–28506

National Science Foundation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28532–28534

Nuclear Regulatory Commission
NOTICES
Consideration of Issuance of Amendment of Renewed Facility Operating License:
Dominion Nuclear Connecticut, Inc., 28534–28537

Occupational Safety and Health Administration
NOTICES
Meetings:
National Advisory Committee on Occupational Safety and Health, 28530–28531

Railroad Retirement Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28537–28538

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
National Securities Clearing Corp., 28539–28541
Philadelphia Stock Exchange, Inc., 28541–28543

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28543–28544
Disaster Declarations:
Arkansas, 28544
Small Business Size Standards:
Waiver of the Nonmanufacturer Rule, 28544

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition Determinations:
''The Tsar and the President: Alexander II and Abraham Lincoln'', 28544–28545
Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008; Determination:
Provision of Military Assistance in Support of Southern Sudan Security Sector Transformation Program, 28545
Meetings:
Shipping Coordinating Committee, 28545–28546

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28506–28507

Surface Transportation Board
NOTICES
Control Exemption:
Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp., Louisiana and North West Railroad Co. LLC, 28549
Lease and Operation Exemption:
Squaw Creek Southern Railroad, Inc.; Central of Georgia Railroad Co., 28550
Trackage Rights Exemption:
CSX Transportation, Inc.—Central Railroad of Indianapolis D/B/A Chicago, Fort Wayne and Eastern, 28550–28551

Susquehanna River Basin Commission
NOTICES
Draft Revised Comprehensive Plan; 90-day Public Comment Period and Public Hearings, 28546

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 28546

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28492–28494

Separate Parts In This Issue

Part II
Health and Human Services Department, Centers for Medicare & Medicaid Services, 28556–28604

Part III
Agriculture Department, Agricultural Marketing Service, 28606–28662

Part IV
Housing and Urban Development Department, 28664–28697

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
59 28606
Proposed Rules:
319 (2 documents) 28372, 28377

9 CFR
Proposed Rules:
93 28382

10 CFR
Proposed Rules:
600 28385
1024 28385

12 CFR
229 28319

14 CFR
71 28320

33 CFR
165 28321

40 CFR
51 28321
52 28321
Proposed Rules:
180 28391

42 CFR
Proposed Rules:
422 28556
423 28556

44 CFR
67 28350
153 28357
Proposed Rules:
67 28394

47 CFR
73 28361
Proposed Rules:
73 28400

48 CFR
Proposed Rules:
3 28407
9 28407
12 28407
52 28407

49 CFR
565 28370

50 CFR
Proposed Rules:
17 28410

Rules and Regulations

Federal Register
Vol. 73, No. 96
Friday, May 16, 2008

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1317]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors (Board) is amending appendix A of Regulation CC to delete the reference to the Memphis branch office of the Federal Reserve Bank of St. Louis and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Atlanta. In addition, the Board is providing advance notice regarding future amendments to appendix A that are anticipated in connection with the Reserve Banks' restructuring of the check-processing operations within the Federal Reserve System.

DATES: The final rule will become effective on July 19, 2008.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. H. Yeganeh, Financial Services Manager (202/728–5801), or Joseph P. Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Heatherun Sophia Allison (202/452–3565), Senior Counsel, Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a ''local check'' than by a ''nonlocal check.'' A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check-processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check-processing region as the depositary bank. Checks that do not meet the requirements for ''local'' checks are considered ''nonlocal.''

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check-processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check-processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check-processing region and thus are local to one another.

Final Amendments to Appendix A

On July 19, 2008, the Reserve Banks will transfer the check-processing operations of the Memphis branch office of the Federal Reserve Bank of St. Louis to the head office of the Federal Reserve Bank of Atlanta.[2] To assist banks in identifying local and nonlocal checks and making funds availability decisions, the Board is amending the lists of routing symbols in appendix A associated with the Federal Reserve Banks of St. Louis and Atlanta to reflect the transfer of check-processing operations from the Memphis branch office to the Atlanta head office. To coincide with the effective date of the underlying check-processing changes, the amendments to appendix A are effective July 19, 2008. The Board is providing notice of the amendments at this time to give affected banks ample time to make any needed processing changes. Early notice also will enable affected banks to amend their availability schedules and related disclosures if necessary and provide their customers with notice of these changes.[3]

Information About Anticipated Future Changes to Appendix A

The Federal Reserve Banks announced on March 31, 2008, that they are accelerating their planned reductions in the number of locations at which they process checks.[4] These steps are being taken in response to the continued nationwide decline in check usage and to position the Reserve Banks more effectively to meet the cost recovery requirements of the Monetary Control Act of 1980. Whereas they had previously announced that the transitions would take place by early 2011, the Reserve Banks now plan to cease check-processing operations at all of their check-processing offices except four—Philadelphia, Cleveland, Atlanta, and Dallas—by early 2010. As a result of the accelerated schedule, the tentative dates in the Board's earlier **Federal Register** notice (73 FR 1267, Jan. 8, 2008) regarding this matter are no longer accurate. Moreover, the accelerated schedule set forth in the Reserve Banks' March 2008 announcement is subject to further review and may change. Institutions seeking the most current information should consult the Reserve Banks' check-restructuring Web site.[5]

The Board plans to amend appendix A in connection with each stage of the restructuring to delete the names of the offices that will no longer process checks and transfer the affected Federal Reserve routing symbols to other check-processing offices. The Board intends to provide notice of each amendment to appendix A approximately 60 days prior to the effective date of the amendment in order to give affected banks ample time to make processing changes and, if

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] The Reserve Banks announced in June 2007 that the check-processing operations of the Memphis branch office would be transferred to the Atlanta head office in the third quarter of 2008. See *http://www.federalreserve.gov/newsevents/press/other/20070626a.htm.*

[3] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

[4] See *http://www.federalreserve.gov/newsevents/press/other/20080331a.htm.*

[5] *http://www.frbservices.org/communications/check_restructuring.html.*

necessary, amend their availability schedules and related disclosures and provide their customers with notice of any changes to their availability schedules.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of the final rule. The revisions to appendix A are technical in nature and are required by the statutory and regulatory definitions of ''check-processing region.'' Because there is no substantive change on which to seek public input, the Board has determined that the § 553(b) notice and comment procedures are unnecessary. In addition, the underlying consolidation of Federal Reserve Bank check-processing offices involves a matter relating to agency management, which is exempt from notice and comment procedures.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The technical amendments to appendix A of Regulation CC will delete the reference to the Memphis branch office of the Federal Reserve Bank of St. Louis and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Atlanta. The depository institutions that are located in the affected check-processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, all paperwork collection procedures associated with Regulation CC already are in place, and the Board accordingly anticipates that no additional burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. The Sixth and Eighth Federal Reserve District routing symbol lists in appendix A are revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

SIXTH FEDERAL RESERVE DISTRICT

[Federal Reserve Bank of Atlanta]

Head Office

0610	2610
0611	2611
0612	2612
0613	2613
0620	2620
0621	2621
0622	2622
0640	2640
0641	2641
0642	2642
0650	2650
0651	2651
0652	2652
0653	2653
0654	2654
0655	2655
0820	2820
0829	2829
0840	2840
0841	2841
0842	2842
0843	2843

Jacksonville Branch

0630	2630
0631	2631
0632	2632
0660	2660
0670	2670

* * * * *

EIGHTH FEDERAL RESERVE DISTRICT

[Federal Reserve Bank of St. Louis]

Head Office

0810	2810
0812	2812
0815	2815
0819	2819
0865	2865

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, May 13, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–10973 Filed 5–15–08; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0022; Airspace Docket 07–AEA–07]

Amendment of Class E Airspace; Waynesburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action amends the Class E airspace area at Waynesburg, PA, to accommodate a new Standard Instrument Approach Procedure (SIAP) that has been developed for Green County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) will be expanded to contain the SIAP and other Instrument Flight Rules (IFR) operations at Green County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP. A minor correction is also being made in the geographic position coordinates of the Green County Airport.

DATES: Effective 0901 UTC, June 5, 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: Melinda Giddens, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

History

On February 21, 2008, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying the Class E airspace area at Waynesburg, PA (73 FR 9504). The proposed action would provide additional controlled airspace to accommodate RNAV (GPS) approaches for Runway 09/27 at the Green County Airport. After publication, a minor error was discovered in the geographic coordinates of the airport. This action also corrects that error.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA.

No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.96, signed August 14, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The class airspace designation listed in this document will be published subsequently in the Order.

The Rule

The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify Class E airspace at Waynesburg, PA, by providing additional controlled airspace for aircraft executing the RNAV (GPS) Runway 09/27 to the Green County Airport. This action also corrects the geographic position coordinates of the airport.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA PA E5 Waynesburg, PA [Revised]

Green County Airport, PA
(Lat. 39°54′04″ N., long. 80°07′51″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within an 8.3-mile radius of Green County Airport.

* * * * *

Issued in College Park, Georgia, on April 21, 2008.

Lynda G. Otting,

Acting Manager, System Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. E8–10425 Filed 5–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0366]

Security Zone; Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Portland Rose Festival Security Zone on the Willamette River from 1 a.m. on June 4, 2008 until 10 a.m. June 10, 2008. This action is necessary for the security of public vessels on a portion of the Willamette River during the fleet week of the Rose Festival. This security zone provides for the regulation of vessel traffic in the vicinity of the moored public vessels. During the enforcement period, entry into this zone is prohibited unless authorized by the Captain of the Port or his designee.

DATES: The regulations in 33 CFR 165.1312 will be enforced commencing from 1 a.m. on June 4, 2008 until 10 a.m. June 10, 2008.

FOR FURTHER INFORMATION CONTACT: MST1 Lucia Mack, Coast Guard Sector Portland, 6767 N. Basin Ave, Portland, OR 97217, telephone 503–240–9311.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Rose Festival Security Zone established by 33 CFR 165.1312 from 1 a.m. on June 4, 2008 until 10 a.m. June 10, 2008.

Under the provisions of 33 CFR 165.33 a vessel may not enter the regulated area, unless it receives permission from the Captain of the Port or his designee. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1312 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: May 6, 2008.

F.G. Myer,

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

[FR Doc. E8–10921 Filed 5–15–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0062; FRL–8566–1]

RIN 2060–AN86

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finalizing regulations to implement the New Source Review (NSR) program for fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers,

generally referred to as ''$PM_{2.5}$''). The NSR program was created by the Clean Air Act (Act or CAA) to ensure that stationary sources of air pollution are constructed or modified in a manner that is consistent with air quality goals in the area.

The Clean Air Fine Particle Implementation Rule, which was proposed in the **Federal Register** on November 1, 2005, included requirements and guidance for State and local air pollution agencies to follow in developing State implementation plans (SIPs) and also the NSR provisions. The final implementation rule that was promulgated on April 25, 2007, included all the SIPs related provisions. In this rulemaking, EPA is finalizing the NSR provisions of the November 1, 2005 proposed rule including the major source threshold, significant emissions rate, and offset ratios for $PM_{2.5}$, interpollutant trading for offsets and applicability of NSR to $PM_{2.5}$ precursors.

DATES: This final rule is effective on July 15, 2008.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0062. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue, Northwest, 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.

FOR FURTHER INFORMATION CONTACT: Mr. Raghavendra (Raj) Rao, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5344, facsimile number: (919) 541–5509, e-mail address: *rao.raj@epa.gov;* or Mr. Dan deRoeck, at the same address, telephone 919–541–5593, or e-mail at *deroeck.dan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups:

Industry group	NAICS [a]
Electric services	221111, 221112, 221113, 221119, 221121, 221122
Petroleum refining	32411
Industrial inorganic chemicals	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188
Industrial organic chemicals	32511, 325132, 325192, 325188, 325193, 32512, 325199
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551
Natural gas liquids	211112
Natural gas transport	48621, 22121
Pulp and paper mills	32211, 322121, 322122, 32213
Paper mills	322121, 322122
Automobile manufacturing	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213
Pharmaceuticals	325411, 325412, 325413, 325414

[a] North American Industry Classification System.

Entities affected by this rule also include States, local reviewing authorities, and Indian country with new and modified major stationary sources.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

C. How is this preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. How is this preamble organized?
II. Purpose
III. Background
A. New Source Review (NSR) Program
B. Fine Particulate Matter and the NAAQS for $PM_{2.5}$
C. Implementation of NSR for $PM_{2.5}$
IV. Overview of This Final Action
V. Rationale for Final Actions
A. Applicability of NSR to Precursors of $PM_{2.5}$ in the Ambient Air
1. What is EPA's legal authority to regulate precursors?
2. What is EPA's approach for addressing precursors?
3. Final Action on SO_2
4. Final Action on NO_X
5. Final Action on VOC
6. Final Action on Ammonia
B. Major Stationary Source Threshold for $PM_{2.5}$
C. Significant Emissions Rate for Direct Emissions of $PM_{2.5}$
D. Significant Emissions Rates for $PM_{2.5}$ Precursors
E. Condensable PM Emissions
F. Prevention of Significant Deterioration (PSD) Program Requirements
1. How must BACT be implemented for $PM_{2.5}$?
2. How does EPA plan to address $PM_{2.5}$ Increments, Significant Impact Levels (SILs), and Significant Monitoring Concentrations (SMCs)?
3. What is the ambient air quality analysis requirement for $PM_{2.5}$?
4. How must the PSD preconstruction monitoring requirement be implemented for $PM_{2.5}$?
G. Nonattainment New Source Review (NA NSR) Requirements
1. What is the required offset ratio for direct $PM_{2.5}$ emissions?
2. Which precursors are subject to the offset requirement?
3. What is the required offset ratio for $PM_{2.5}$ precursors?
4. Is interpollutant trading allowable to comply with offset requirements?
H. How will the transition to the $PM_{2.5}$ PSD requirements occur?
1. Background
2. Transition for ''Delegated States''
3. Transition for ''SIP-Approved States''
I. How will the transition to the $PM_{2.5}$ NA NSR requirements occur?
1. Background
2. Transition

3. Implementation of NSR Under the ''Emissions Offset Interpretative Ruling'' (40 CFR part 51, appendix S) with Revisions
J. Does major NSR apply to $PM_{2.5}$ precursors during the SIP development period?
K. Are there any Tribal concerns?
L. What are the requirements for minor NSR for $PM_{2.5}$?
M. Rural Transport Areas
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045—Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Petitions for Judicial Review
M. Determination Under Section 307(d)
VII. Statutory Authority

II. Purpose

The purpose of this rulemaking is to finalize the major NSR program provisions for $PM_{2.5}$. This final rule supplements the final implementation rule for $PM_{2.5}$ (excluding the NSR provisions) that we [1] promulgated on April 25, 2007 at 72 FR 20586. This final action on the bulk of the major NSR program for $PM_{2.5}$ along with our proposed rule on increments, SILs, and SMC, when final, will represent the final elements necessary to implement a $PM_{2.5}$ PSD program. When both rules are promulgated and in effect, the $PM_{2.5}$ PSD program will no longer use a PM_{10} program as a surrogate, as has been the practice under our existing guidance.

III. Background

A. New Source Review (NSR) Program

The existing regulations require both major and minor NSR programs to address any pollutant for which there is a National Ambient Air Quality Standard (NAAQS) and precursors to the formation of such pollutant when identified for regulation by the Administrator. This final rule amends the NSR regulations to establish the minimum elements for State, local, and Tribal agency programs implementing NSR for the $PM_{2.5}$ NAAQS. This preamble also explains what interim provisions would apply with respect to $PM_{2.5}$ during the State Implementation Plan (SIP) development period.

The NSR program is a preconstruction permitting program that applies when a source is constructed or modified. The NSR program is composed of three different programs:

- Prevention of Significant Deterioration (PSD);
- Nonattainment NSR (NA NSR); and
- Minor NSR.

We often refer to the PSD and NA NSR programs together as the major NSR program because these programs regulate only major sources.[2]

The PSD program applies when a major source that is located in an area that is designated as attainment or unclassifiable for any criteria pollutant is constructed or undergoes a major modification.[3] [4] The NA NSR program applies when a major source that is located in an area that is designated as nonattainment for any criteria pollutant is constructed or undergoes a major modification. The minor NSR program addresses both major and minor sources that undertake construction or modification activities that do not qualify as major, and it applies regardless of the designation of the area in which a source is located.

The national regulations that apply to each of these programs are located in the Code of Federal Regulations (CFR) as shown in the following table:

Program	Applicable regulations
PSD	40 CFR 52.21, 40 CFR 51.166, 40 CFR 51.165(b).
NA NSR	40 CFR 52.24, 40 CFR 51.165, 40 CFR part 51, appendix S.
Minor NSR	40 CFR 51.160–164.

The PSD requirements include but are not limited to:

- Installation of Best Available Control Technology (BACT);
- Air quality monitoring and modeling analyses to ensure that a project's emissions will not cause or contribute to a violation of any NAAQS or maximum allowable pollutant increase (PSD increment);
- Notification of Federal Land Manager of nearby Class I areas; and
- Public comment on the permit.

Nonattainment NSR requirements include but are not limited to:

- Installation of Lowest Achievable Emission Rate (LAER) control technology;
- Offsetting new emissions with creditable emissions reductions;
- Certification that all major sources owned and operated in the State by the same owner are in compliance with all applicable requirements under the Act;
- An alternative siting analysis demonstrating that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification; and
- Public comment on the permit.

Minor NSR programs must meet the statutory requirements in section 110(a)(2)(C) of the Act, which requires ''* * * regulation of the modification and construction of any stationary source * * * as necessary to assure that national ambient air quality standards are achieved.''

B. Fine Particulate Matter and the NAAQS for $PM_{2.5}$

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate (SO_4); nitrate (NO_3); ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as ''crustal'' material, although it may contain material from other sources. Airborne particulate matter (PM) with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is

[1] In this proposal, the terms ''we,'' ''us,'' and ''our,'' refer to the EPA and the terms ''you,'' and ''your,'' refer to the owners or operators of stationary sources of air pollution.

[2] The Act uses the terms ''major emitting facility'' to refer to sources subject to the PSD program, and ''major stationary source'' to refer to sources subject to NA NSR. *See* CAA sections 165, 169, 172(c)(5), and 302(j). For ease of reference, we use the term ''major source'' to refer to both terms.

[3] The term ''criteria pollutant'' means a pollutant for which we have set a NAAQS.

[4] In addition, the PSD program applies to most noncriteria regulated pollutants.

one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) are considered to be ''fine particles,'' and are also known as $PM_{2.5}$. ''Primary'' particles are emitted directly into the air as a solid or liquid particle (*e.g.*, elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). ''Secondary'' particles (*e.g.*, sulfate and nitrate) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to $PM_{2.5}$ are significant. Epidemiological studies have shown a significant correlation between elevated $PM_{2.5}$ levels and premature mortality. Other important effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.

On July 18, 1997, we revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. We established health-based (primary) annual and 24-hour standards for $PM_{2.5}$ (62 FR 38652). We set an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$. At the time we established the primary standards in 1997, we also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$ such as visibility impairment, soiling, and materials damage.

On October 17, 2006, we revised the primary and secondary NAAQS for $PM_{2.5}$ and PM_{10}. In that rulemaking, we reduced the 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. In addition, we retained PM_{10} as the indicator for coarse PM, retained the existing PM_{10} 24-hour NAAQS of 150 $\mu g/m^3$, and revoked the annual PM_{10} NAAQS (which had previously been set at 50 $\mu g/m^3$). *See* 71 FR 61236.

C. Implementation of NSR for $PM_{2.5}$

After we promulgated the NAAQS for $PM_{2.5}$ in 1997, we issued a guidance document entitled ''Interim Implementation for the New Source Review Requirements for $PM_{2.5}$'' (John S. Seitz, EPA, October 23, 1997).[5] As noted in that guidance, section 165 of the Act suggests that PSD requirements become effective for a new NAAQS upon the effective date of the NAAQS. Section 165(a)(1) of the Act provides that no new or modified major source may be constructed without a PSD permit that meets all of the section 165(a) requirements with respect to the regulated pollutant. Moreover, section 165(a)(3) provides that the emissions from any such source may not cause or contribute to a violation of any NAAQS. Also, section 165(a)(4) requires BACT for each pollutant subject to PSD regulation. The 1997 guidance stated that sources would be allowed to use implementation of a PM_{10} program as a surrogate for meeting $PM_{2.5}$ NSR requirements until certain difficulties were resolved, primarily the lack of necessary tools to calculate the emissions of $PM_{2.5}$ and related precursors, the lack of adequate modeling techniques to project ambient impacts, and the lack of $PM_{2.5}$ monitoring sites.

On April 5, 2005, we issued a guidance document entitled ''Implementation of New Source Review Requirements in PM–2.5 Nonattainment Areas'' (Stephen D. Page, EPA).[6] This memorandum provides guidance on the implementation of the nonattainment major NSR provisions in $PM_{2.5}$ nonattainment areas in the interim period between the effective date of the $PM_{2.5}$ NAAQS designations (April 5, 2005) and the promulgation date of the final NSR regulations reflected in this action. Besides affirming the continuation of the Seitz guidance memo in $PM_{2.5}$ attainment areas, the April 5, 2005 memo recommends that until we promulgate the $PM_{2.5}$ major NSR regulations, States should use a PM_{10} nonattainment major NSR program as a surrogate to address the requirements of nonattainment major NSR for $PM_{2.5}$.

On November 1, 2005, we proposed a rule to implement the 1997 $PM_{2.5}$ NAAQS, including proposed revisions to the NSR program (70 FR 65984). As discussed above, this action finalizes the portion of that proposal related to NSR. The other portions of that proposal, concerning attainment dates, SIP submittals, reasonable further progress (RFP) requirements, etc., were finalized on April 25, 2007 (72 FR 20586).

On September 21, 2007, we proposed additional elements for the PSD program for $PM_{2.5}$ including $PM_{2.5}$ ''increments,'' significant impact levels (SILs), and significant monitoring concentrations (SMCs) (72 FR 54112). Increments are the maximum allowable increases over baseline concentrations that can be permitted to occur when a major source is constructed or modified. This is one mechanism by which the PSD program prevents significant deterioration in air quality. A SIL defines the level of ambient air impact that is considered a ''significant contribution'' to air quality. If the modeled maximum ambient impacts of a new source or modification are below the SILs, the source: (1) Is presumed not to cause or contribute significantly to a PSD increment or NAAQS violation, and (2) is not required to perform the multiple-source, cumulative impacts assessments that are otherwise required under PSD. An SMC defines the level of modeled ambient air impact below which the reviewing authority may exempt a new or modified source from conducting the preconstruction monitoring that may otherwise be required under PSD. The reviewing authority may also exempt the source from preconstruction monitoring if the existing monitored ambient concentration is less than the SMC. This final action on the bulk of the major NSR program for $PM_{2.5}$ along with our proposed rule on increments, SILs, and SMC, when final, will represent the final elements necessary to implement a $PM_{2.5}$ PSD program. When both rules are promulgated and in effect, the $PM_{2.5}$ PSD program will no longer use a PM_{10} program as a surrogate, as has been the practice under our existing guidance.

IV. Overview of This Final Action

The table below summarizes the main elements of the existing NSR program that this action addresses for $PM_{2.5}$ as a regulated NSR pollutant. The table indicates our final position on an issue and whether our position has changed based on comments received. Our final action for each element, or where appropriate, explanation of implementation under existing

[5] Available in the docket for this rulemaking, ID No. EPA–HQ–OAR–2003–0062, and at *http://www.epa.gov/region07/programs/artd/air/nsr/nsrmemos/pm25.pdf.*

[6] Available in the docket for this rulemaking, ID. No. EPA–HQ–OAR–2003–0062, and at *http://www.epa.gov/nsr/documents/nsrmemo.pdf.*

regulations, is addressed in detail in the referenced sections of this preamble.

NSR program element	Final action	Section
Applicability to $PM_{2.5}$ precursors	SO_2—Must be regulated as precursor, NO_X—Presumed regulated, VOC—Presumed not regulated, Ammonia—Presumed not regulated.	V.A
PSD major source threshold	100/250 tons per year (tpy)	V.B
NA NSR major source threshold	100 tpy	V.B
Significant emissions rate	Direct $PM_{2.5}$ emissions—10 tpy, SO_2 precursor—40 tpy, NO_X precursor—40 tpy, if regulated.	V.C & V.D
Condensable $PM_{2.5}$ emissions	Included in direct $PM_{2.5}$ emissions for major NSR applicability determinations after the end of the transition period (changed based on comments received).	V.E
Control technology: BACT and LAER	Applies for direct $PM_{2.5}$ emissions, SO_2, and other precursors if regulated.	V.F.1 & V.G
Prevention of significant deterioration	Increments, SILs and SMCs covered in a separate rulemaking	V.F.2
Air quality impact analysis	Applies for $PM_{2.5}$	V.F.3
Preconstruction monitoring	Applies for $PM_{2.5}$ (finalizing options 1 & 3)	V.F.4
NA NSR Statewide compliance and alternative siting analyses.	Applies for direct $PM_{2.5}$ emissions and precursors, if regulated	V.G
NA NSR offsets	Applies for direct $PM_{2.5}$ emissions and precursors, if regulated	V.G.1–3
Interpollutant offsetting	Allowed on a regional or statewide basis; EPA is issuing guidance with recommended regional hierarchies and trading ratios (changed based on comments received).	V.G.4
Transition for PSD	Continues to use PM_{10} as a surrogate	V.H
Transition for NA NSR	Applies through an approved SIP or through 40 CFR part 51, appendix S	V.I
SIP development period	Clarifies that major NSR does not apply to precursors during the SIP development period in attainment areas (changed based on comments received).	V.J
Tribal concerns	Cross references to proposed NSR rules for Indian country	V.K
Minor NSR	Clarifies that State and local regulatory programs must include $PM_{2.5}$ requirements for minor sources.	V.L
NSR transport option	Transport classification not available	V.M

The provisions of the $PM_{2.5}$ major NSR program finalized in this action are codified as revisions in the previously existing regulatory text. The revisions to NA NSR are codified in 40 CFR 51.165 and appendix S to 40 CFR part 51. The PSD revisions are codified in 40 CFR 51.166 and 52.21.

V. Rationale for Final Actions

In this section we discuss each element of our proposal for this rulemaking, explain our final action, discuss the rationale for our final action, and summarize the major public comments we received. The full summary of public comments on the proposal, along with our responses, can be found in the docket for this rulemaking.[7]

A. Applicability of NSR to Precursors of $PM_{2.5}$ in the Ambient Air

Scientific research has shown that various pollutants can contribute to ambient $PM_{2.5}$ concentrations. In addition to direct $PM_{2.5}$ emissions, these include the following precursors:

- Sulfur dioxide (SO_2);
- Oxides of nitrogen (NO_X);
- Volatile organic compounds (VOC); and
- Ammonia.

These gas-phase precursors undergo chemical reactions in the atmosphere to form secondary PM. Formation of secondary PM depends on numerous factors including the concentrations of precursors; the concentrations of other gaseous reactive species; atmospheric conditions including solar radiation, temperature, and relative humidity; and the interactions of precursors with preexisting particles and with cloud or fog droplets. Several atmospheric aerosol species, such as ammonium nitrate and certain organic compounds, are semi-volatile and are found in both gas and particle phases. Given the complexity of PM formation processes, new information from the scientific community continues to emerge to improve our understanding of the relationship between sources of PM precursors and secondary particle formation.

Precursors contribute significantly to ambient $PM_{2.5}$ concentrations, producing approximately half of the concentration nationally. In most areas of the country, $PM_{2.5}$ precursor emissions are major contributors to ambient $PM_{2.5}$ concentrations. The relative contribution to ambient $PM_{2.5}$ concentrations from each of these pollutants varies by area. The relative effect of reducing emissions of these pollutants is also highly variable.

Some $PM_{2.5}$ precursors are already subject to major NSR under other NAAQS, as shown in the following table:

$PM_{2.5}$ precursor	Existing program coverage for major NSR applicability
NO_X	NA NSR and PSD for NO_2 and Ozone.
SO_2	NA NSR and PSD for SO_2.
VOC	NA NSR and PSD for Ozone.
Ammonia	No coverage for NSR.

In the subsections that follow, we first discuss our legal authority under the Act for regulating precursors to the formation of criteria pollutants, and then discuss our final action for each of the $PM_{2.5}$ precursors.

1. What is EPA's legal authority to regulate precursors?

As we discussed in the November 1, 2005 proposal, we interpret the Act to not only provide explicit authority for EPA to regulate precursors, but also to grant us discretion to determine how to address precursors for particular regulatory purposes. This reading is based on section 302(g) of the Act, which defines the term ''air pollutant'' to include ''any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.'' The first clause of this second sentence in section 302(g) explicitly authorizes the Administrator

[7] *See* ''Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers in Diameter ($PM_{2.5}$); Response to Comments,'' U.S. Environmental Protection Agency. It can be viewed or downloaded at *www.regulations.gov*, Docket ID No. EPA–HQ–OAR–2003–0062.

to identify and regulate precursors as air pollutants under other parts of the Act. In addition, the second clause of the sentence indicates that the Administrator has discretion to identify which pollutants should be classified as precursors for particular regulatory purposes. Thus, we do not necessarily construe the Act to require that EPA identify a particular precursor as an air pollutant for all regulatory purposes where it can be demonstrated that various programs under the Act address different aspects of the air pollutant problem. Likewise, we do not interpret the Act to require that EPA treat all precursors of a particular pollutant the same under any one program when there is a basis to distinguish between such precursors within that program. For example, in a recent rule addressing $PM_{2.5}$ precursors for purposes of the transportation conformity program, we chose to adopt a different approach for one precursor based on the limited emissions of that precursor from onroad mobile sources and the degree to which it contributes to $PM_{2.5}$ concentrations (70 FR 24280, May 6, 2005).

Other provisions of the Act reinforce our reading of section 302(g) to mean that Congress intended precursors to NAAQS pollutants to be subject to the air quality planning and control requirements of the Act, but also recognized that there may be circumstances where it is not appropriate to subject precursors to certain requirements of the Act. Section 182 of the Act provides for the regulation of NO_X and VOC as precursors to ozone in ozone nonattainment areas, but also provides in section 182(f) that major stationary sources of NO_X (an ozone precursor) are not subject to emission reduction requirements for ozone where the State shows through modeling that NO_X reductions do not decrease ozone. Section 189(e) provides for the regulation of PM_{10} precursors in PM_{10} nonattainment areas, but also recognizes that there may be certain circumstances (*e.g.*, if precursor emission sources do not significantly contribute to PM_{10} levels) where it is not appropriate to apply control requirements to PM_{10} precursors. The legislative history of section 189(e) recognized the complexity behind the science of precursor transformation into PM_{10} ambient concentrations and the need to harmonize the regulation of PM_{10} precursors with other provisions of the Act:

> The Committee notes that some of these precursors may well be controlled under other provisions of the CAA. The Committee intends that * * * the Administrator will develop models, mechanisms, and other methodology to assess the significance of the PM_{10} precursors in improving air quality and reducing PM_{10}. Additionally, the Administrator should consider the impact on ozone levels of PM_{10} precursor controls. The Committee expects the Administrator to harmonize the PM_{10} reduction objective of this section with other applicable regulations of this CAA regarding PM_{10} precursors, such as NO_X.

See H. Rpt. 101–490, Pt. 1, at 268 (May 17, 1990), reprinted in S. Prt. 103–38, Vol. II, at 3292.

In summary, section 302(g) of the Act clearly calls for the regulation of precursor pollutants, but the Act also identifies circumstances when it may not be appropriate to regulate precursors and gives the Administrator discretion to determine how to address particular precursors under various programs required by the Act. Due to the complexities associated with precursor emissions and their variability from location to location, we believe that in certain situations it may not be effective or appropriate to control a certain precursor under a particular regulatory program or for EPA to require similar control of a particular precursor in all areas of the country.

The term ''air pollutant,'' as defined in section 302(g), is incorporated into the NSR provisions for various purposes. Thus, we interpret section 302(g) of the Act to require us to consider how to address precursors under the NSR program.

With regard to PSD, section 165(a)(3) of the Act states that new or modified major sources must demonstrate that emissions ''will not cause, or contribute to, air pollution in excess of any * * * NAAQS in any air quality control region * * *.'' A source could not reasonably make this demonstration without considering precursors that EPA has identified for this purpose. Section 165(a)(4) of the Act states that a new or modified source must apply BACT ''for each pollutant subject to regulation under this Act emitted from, or which results from, such facility.'' The phrase ''emitted from, or which results from'' indicates that the statute is not limited to direct emissions, but rather extends to precursors as well.

With regard to NA NSR, sections 172(c)(4) and 173 require States to demonstrate, among other things, that emissions from new or modified major sources are consistent with the achievement of ''reasonable further progress.'' Reasonable further progress is further defined as reductions of the relevant air pollutant, which is defined in section 302(g) to include precursors identified by EPA as subject to regulation for that purpose.

2. What is EPA's approach for addressing precursors?

As proposed, we are finalizing different approaches for addressing the individual precursors to $PM_{2.5}$ under the Act's NSR provisions. Generally, where the scientific data and modeling analyses provide reasonable certainty that the pollutant's emissions are a significant contributor to ambient $PM_{2.5}$ concentrations, we believe that pollutant should be identified as a ''regulated NSR pollutant'' and subject to the $PM_{2.5}$ NSR provisions. Conversely, where the effect of a pollutant's emissions on ambient $PM_{2.5}$ concentrations is subject to substantial uncertainty, such that in some circumstances the pollutant may not result in formation of $PM_{2.5}$, or control of the pollutant may have no effect or may even aggravate air quality, we generally believe it is unreasonable to establish a nationally-applicable presumption that the pollutant is a regulated NSR pollutant subject to the requirements of NSR for $PM_{2.5}$. We discuss our final action with respect to each of the $PM_{2.5}$ precursors and the basis for that action in sections V.A.2 through 5.

For those precursors that are either presumed to be regulated or not regulated (NO_X, VOC, and ammonia), a State program need not follow the presumed approach if it can be demonstrated that the precursor in question is not, or is, a ''significant contributor'' to $PM_{2.5}$ concentrations within the specific area. ''Significant contribution'' in this context is a different concept than that in section 110(a)(2)(D) of the Act. Section 110(a)(2)(D) of the Act prohibits States from emitting air pollutants in amounts which significantly contribute to nonattainment or other air quality problems in other States. Consistent with the previous discussion of sections 189(e) and 302(g), we are clarifying that the use in this NSR implementation rule of the term ''significant contribution'' to the area's $PM_{2.5}$ concentration means that a significant change in emissions of the precursor from sources in the area would be projected to provide a significant change in $PM_{2.5}$ concentrations in the area. For example, if modeling indicates that a reduction in an area's NO_X emissions would reduce ambient $PM_{2.5}$ levels in the area, but that a reduction in ammonia emissions would result in virtually no change in ambient $PM_{2.5}$ levels, this would suggest that NO_X is a significant contributor but that ammonia is not. We are not

establishing in this rule a quantitative test for determining whether $PM_{2.5}$ levels in an area change significantly in response to reductions in precursor emissions in the area. However, in considering this question, it is relevant to consider that relatively small reductions in $PM_{2.5}$ levels are estimated to result in worthwhile public health benefits.

This approach to identifying a precursor as a regulated NSR pollutant reflects atmospheric chemistry conditions in the area and the magnitude of emissions of the precursor in the area. Assessments of whether it is technically feasible and cost effective to control particular emissions units at a source should be part of the later BACT determination within a permit action, and should occur after the basic assessment of which precursors are to be regulated NSR pollutants in an area is completed.

Most commenters did not question our legal authority to identify and regulate $PM_{2.5}$ precursors. However, some commenters argued, based on the language of sections 302(g) and 189(e) of the Act, that once we have designated a compound as a precursor, we do not have discretion to presumptively exclude it from NSR requirements. Other commenters on this issue indicated that we do have such discretion, based on the *de minimis* doctrine of the *Alabama Power* decision or on practical implementation considerations such as the uncertainty in measuring and modeling the effect of $PM_{2.5}$ precursors.

We do not agree with the comment that the Act does not give us discretion to presumptively exclude a $PM_{2.5}$ precursor from NSR requirements. As stated previously, we believe that section 302(g) allows the Administrator to presumptively not require certain precursors to be addressed in $PM_{2.5}$ NSR programs generally, while allowing the State or EPA to make a finding for a specific area to override the general presumption. In the following pollutant-specific sections of this preamble, we find that at this time there is sufficient uncertainty regarding whether certain precursors significantly contribute to $PM_{2.5}$ concentrations in all areas such that the policy set forth in this rule does not presumptively require certain precursors (ammonia, VOC) to be controlled in each area. However, the State or EPA may reverse the presumption and regulate a precursor if it provides a demonstration showing that the precursor is a significant contributor to $PM_{2.5}$ concentrations in the area. In addition, if in the State's NSR program adoption process a commenter provides additional information suggesting an alternative policy for regulating a particular precursor, the State will need to respond to this information in its rulemaking action.

Hence, we continue to believe that the Act provides us the authority not only to identify and regulate precursors to $PM_{2.5}$, but also to treat precursors of the same pollutant differently under the same program.

3. Final Action on SO_2

Sulfur dioxide is emitted mostly from the combustion of fossil fuels in boilers operated by electric utilities and other industrial sources. Less than 20 percent of SO_2 emissions nationwide are from other sources, mainly other industrial processes such as oil refining and pulp and paper production. The formation of sulfuric acid from the oxidation of SO_2 is an important process affecting most areas in North America. There are three different pathways for this transformation.

First, gaseous SO_2 can be oxidized by the hydroxyl radical (OH) to create sulfuric acid. This gaseous SO_2 oxidation reaction occurs slowly and only in the daytime. Second, SO_2 can dissolve in cloud water (or fog or rainwater), and there it can be oxidized to sulfuric acid by a variety of oxidants, or through catalysis by transition metals such as manganese or iron. If ammonia is present and taken up by the water droplet, then ammonium sulfate will form as a precipitate in the water droplet. After the cloud changes and the droplet evaporates, the sulfuric acid or ammonium sulfate remains in the atmosphere as a particle. This aqueous phase production process involving oxidants can be very fast; in some cases all the available SO_2 can be oxidized in less than an hour. Third, SO_2 can be oxidized in reactions in the particle-bound water in the aerosol particles themselves. This process takes place continuously, but only produces appreciable sulfate in alkaline (dust, sea salt) coarse particles. Oxidation of SO_2 has also been observed on the surfaces of black carbon and metal oxide particles. During the last 20 years, much progress has been made in understanding the first two major pathways, but some important questions still remain about the smaller third pathway. Models indicate that more than half of the sulfuric acid in the eastern United States and in the overall atmosphere is produced in clouds.

The sulfuric acid formed from these pathways reacts readily with ammonia to form ammonium sulfate, $(NH_4)_2SO_4$. If there is not enough ammonia present to fully neutralize the produced sulfuric acid (one molecule of sulfuric acid requires two molecules of ammonia), part of it exists as ammonium bisulfate; NH_4HSO_4 (one molecule of sulfuric acid and one molecule of ammonia) and the particles are more acidic than ammonium sulfate. In certain situations (in the absence of sufficient ammonia for neutralization), sulfate can exist in particles as sulfuric acid, H_2SO_4. Sulfuric acid often exists in the plumes of stacks where SO_2, sulfur trioxide (SO_3), and water vapor are in much higher concentrations than in the ambient atmosphere, but these concentrations become quite small as the plume is cooled and diluted by mixing.

Because sulfate is a significant component (*e.g.*, ranging from 9 percent to 40 percent) of $PM_{2.5}$ concentrations, and contributes to other air quality problems in all regions of the country, we proposed to require States to treat SO_2 as a $PM_{2.5}$ precursor in all areas. We are retaining the same approach for SO_2 in this final rule. Sulfate is an important precursor to $PM_{2.5}$ formation in all areas, and has a strong regional impact on $PM_{2.5}$ concentrations. This approach is consistent with past EPA regulations, such as the Clean Air Interstate Rule (CAIR), the Clean Air Visibility Rule, the Acid Rain rules, and the Regional Haze rule, each of which require SO_2 reductions to address fine particle pollution and related air quality problems. Finally, we do not believe that regulating SO_2 as a precursor to $PM_{2.5}$ is likely to add a major burden to sources, as SO_2 is already regulated as part of the NSR program for the SO_2 NAAQS.

Most commenters who addressed this issue agreed that SO_2 should be regulated as a $PM_{2.5}$ precursor, although one only supported regulation of SO_2 as a precursor in NA NSR, and not under PSD. Two commenters disagreed that SO_2 acts as precursors to $PM_{2.5}$ in all cases and indicated that it should not be regulated as an ''always-in'' precursor.

We find the commenters' arguments against regulating SO_2 as a precursor unpersuasive. Sulfate is a significant fraction of $PM_{2.5}$ mass in all nonattainment areas currently, and although large SO_2 reductions are projected from electric generating units with the implementation of the CAIR program, sulfate is still projected to be a key contributor to $PM_{2.5}$ concentrations in the future, in both attainment and nonattainment areas. Sulfur dioxide emissions also lead to sulfate formation on both regional and local scales.

4. Final Action on NO_X

The sources of NO_X are numerous and widespread. The combustion of fossil fuel generates the majority of NO_X emissions, with large contributions from power generation and mobile sources. Nitrates are formed from the oxidation of NO_X into nitric acid (HNO_3) either during the daytime (reaction with OH) or during the night (reactions with ozone and water). Nitric acid continuously transfers between the gas and the condensed phases through condensation and evaporation processes in the atmosphere. However, unless it reacts with other species (such as ammonia, sea salt, or dust) to form a neutralized salt, it will volatilize and not be measured using standard $PM_{2.5}$ measurement techniques. The formation of aerosol ammonium nitrate is favored by the availability of ammonia, low temperatures, and high relative humidity. Because ammonium nitrate is semivolatile and not stable in higher temperatures, nitrate levels are typically lower in the summer months and higher in the winter months. The resulting ammonium nitrate is usually in the sub-micrometer particle size range. Reactions with sea salt and dust lead to the formation of nitrates in coarse particles. Nitric acid may be dissolved in ambient aerosol particles.

Based on a review of speciated monitoring data analyses, it is apparent that nitrate concentrations vary significantly across the country. For example, in some southeastern locations, annual average nitrate levels are in the range of 6 to 8 percent of total $PM_{2.5}$ mass, whereas nitrate comprises 40 percent or more of $PM_{2.5}$ mass in certain California locations. Nitrate formation is favored by the availability of ammonia, low temperatures, and high relative humidity. It is also dependent upon the relative degree of nearby SO_2 emissions because ammonia reacts preferentially with SO_2 over NO_X. Reductions in NO_X emissions are expected to reduce $PM_{2.5}$ concentrations in most areas. However, it has been suggested that in a limited number of areas, NO_X control would result in increased $PM_{2.5}$ mass by disrupting the ozone cycle and leading to increased oxidation of SO_2 to form sulfate particles, which are heavier than nitrate particles.

Because of these factors, we are finalizing our proposed approach to NO_X as a precursor to $PM_{2.5}$ for the NSR program. Under this approach, NO_X is presumed to be a significant contributor to ambient $PM_{2.5}$ concentrations in all PSD and NA NSR areas. However, a State or EPA may rebut this presumption for a specific area if the State demonstrates to the Administrator's satisfaction or EPA demonstrates that NO_X emissions in that area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations. If a State or EPA makes such a demonstration, NO_X would not be considered a $PM_{2.5}$ precursor under the NSR program in that area. If a State or EPA does not make such a demonstration, NO_X must be regulated as a precursor under the PSD, NA NSR, and minor source programs for $PM_{2.5}$. As discussed previously, this ''presumed-in'' approach is warranted based on the well-known transformation of NO_X into nitrates, coupled with the fact that nitrate concentrations vary significantly around the country. This approach is consistent with other recent EPA regulations requiring NO_X reductions, which will reduce fine particle pollution, such as the CAIR and a number of rules targeting onroad and nonroad engine emissions.

We had proposed that NO_X be presumed to be a precursor in any State that EPA has identified as a source of the $PM_{2.5}$ interstate transport problem. In the final rule, we have dropped this requirement to be consistent with EPA's Clean Air Fine Particle Implementation Rule published on April 25, 2007. 72 FR 20586. Such a requirement is not necessary in this rule because States that contribute to downwind nonattainment for $PM_{2.5}$ are otherwise required to address transported NO_X emissions under the CAIR.

In areas where NO_X is regulated as a precursor to $PM_{2.5}$, we do not believe that this is likely to add a major burden to sources, as NO_X is already a regulated NSR pollutant. This is because NO_X is an identified precursor for the ozone NAAQS and an indicator for the NO_2 NAAQS.

Several commenters agreed that NO_X should be regulated under major NSR as a precursor to $PM_{2.5}$. Some of these commenters believe that States should not have the opportunity to demonstrate otherwise, or indicated that a waiver for exclusion of NO_X as a precursor should be allowed only if downwind States approve such a waiver. A few commenters stated that NO_X should not be regulated as a precursor to $PM_{2.5}$ in the major NSR program, either on grounds of scientific uncertainty regarding the impact of NO_X emissions on ambient $PM_{2.5}$ concentrations or on policy grounds (*i.e.*, because NO_X is already regulated under NSR for other NAAQS).

We are not persuaded by the argument that NO_X should not be regulated as a $PM_{2.5}$ precursor because it is a regulated pollutant under other NAAQS. We do not find the degree of scientific uncertainty regarding $PM_{2.5}$ formation from NO_X to be great enough to preclude regulation of NO_X as a precursor with an opportunity for a case-by-case demonstration that NO_X is not a significant contributor. Furthermore, the fact that we regulate NO_X for other NAAQS under the NSR program does not by itself justify declining to regulate NO_X as a $PM_{2.5}$ precursor in circumstances where NO_X also significantly contributes to $PM_{2.5}$ formation. As noted earlier, the regulation of NO_X as a precursor for $PM_{2.5}$ is not expected to add a major burden to regulated sources that are already required to limit NO_X emission to meet other NAAQS.

We disagree with the commenters who believe that emissions of NO_X cannot be correlated to $PM_{2.5}$ formation, or that it is unclear when NO_X acts as a precursor. As discussed previously, our decision to regulate NO_X as a precursor to $PM_{2.5}$ is based on the well-known transformation of NO_X into nitrates. Nevertheless, nitrate concentrations vary significantly across the country. As a result, we believe that the ''presumed-in'' approach is appropriate for NO_X since a State can demonstrate that NO_X should not be a precursor in a given area or region.

While we recognize that NO_X emissions can affect $PM_{2.5}$ concentrations in downwind areas, we disagree that approval from downwind States should be required for a State to exclude NO_X as a $PM_{2.5}$ precursor for a particular area. This is because States that contribute to downwind nonattainment for $PM_{2.5}$ are otherwise required to address transported NO_X emissions under the CAIR.

5. Final Action on VOC

The organic component of ambient particles is a complex mixture of hundreds or even thousands of organic compounds. These organic compounds are either emitted directly from sources (*i.e.*, primary organic aerosol) or can be formed by reactions in the ambient air (*i.e.*, secondary organic aerosol, or SOA). Volatile organic compounds are key precursors in the formation processes for both SOA and ozone. The relative importance of organic compounds in the formation of secondary organic particles varies from area to area, depending upon local emissions sources, atmospheric chemistry, and season of the year.

The lightest organic molecules (*i.e.*, molecules with six or fewer carbon atoms) occur in the atmosphere mainly as vapors and typically do not directly

form organic particles at ambient temperatures due to the high vapor pressure of their products. However, they participate in atmospheric chemistry processes resulting in the formation of ozone and certain free radical compounds (such as OH) which in turn participate in oxidation reactions to form SOA, sulfates, and nitrates. These VOCs include all alkanes with up to six carbon atoms (from methane to hexane isomers), all alkenes with up to six carbon atoms (from ethene to hexene isomers), benzene, and many low-molecular weight carbonyls, chlorinated compounds, and oxygenated solvents.

Intermediate weight organic molecules (*i.e.*, compounds with 7 to 24 carbon atoms) often exhibit a range of volatilities and can exist in both the gas and aerosol phase at ambient conditions. For this reason they are also referred to as semivolatile compounds. Semivolatile compounds react in the atmosphere to form SOA. These chemical reactions are accelerated in warmer temperatures, and studies show that SOA typically comprises a higher percentage of carbonaceous PM in the summer as opposed to the winter. The production of SOA from the atmospheric oxidation of a specific VOC depends on four factors: Its atmospheric abundance, its chemical reactivity, the availability of oxidants (ozone, OH, HNO_3), and the volatility of its products. In addition, recent work suggests that the presence of acidic aerosols may lead to an increased rate of SOA formation. Aromatic compounds such as toluene, xylene, and trimethyl benzene are considered to be the most significant anthropogenic SOA precursors and have been estimated to be responsible for 50 to 70 percent of total SOA in some airsheds. Man-made sources of aromatics gases include mobile sources, petrochemical manufacturing, and solvents. Some of the biogenic hydrocarbons emitted by trees are also considered to be important precursors of secondary organic PM. Terpenes (and b-pinene, limonene, carene, etc.) and the sesquiterpenes are expected to be major contributors to SOA in areas with significant vegetation cover, but isoprene is not. Terpenes are very prevalent in areas with pine forests, especially in the southeastern United States. The rest of the anthropogenic hydrocarbons (higher alkanes, paraffins, etc.) have been estimated to contribute 5 to 20 percent to the SOA concentration depending on the area.

The contribution of the primary and secondary components of organic aerosol to the measured organic aerosol concentrations remains a complex issue. Most of the research performed to date has been done in southern California, and more recently in central California, while fewer studies have been completed on other parts of North America. Many studies suggest that the primary and secondary contributions to total organic aerosol concentrations are highly variable, even on short time scales. Studies of pollution episodes indicate that the contribution of SOA to the organic PM can vary from 20 percent to 80 percent during the same day.

Despite significant advances in understanding the origins and properties of SOA, it remains probably the least understood component of $PM_{2.5}$. The reactions forming secondary organics are complex, and the number of intermediate and final compounds formed is voluminous. Some of the best efforts to unravel the chemical composition of ambient organic aerosol matter have resulted in quantifying the concentrations of hundreds of organic compounds representing only 10 to 20 percent of the total organic aerosol mass. For this reason, SOA continues to be a significant topic of research and investigation.

Current scientific and technical information shows that carbonaceous material is a significant fraction of total $PM_{2.5}$ mass in most areas, that certain VOC emissions are precursors to the formation of SOA, and that a considerable fraction of the total carbonaceous material originates from local as opposed to regional sources. However, while significant progress has been made in understanding the role of gaseous organic material in the formation of organic PM, this relationship remains complex. We recognize that further research and technical tools are needed to better characterize emissions inventories for specific VOC, and to determine the extent of the contribution of specific VOC to organic PM mass.

As a result, this final rule does not, in general, require regulation of VOC as a precursor to $PM_{2.5}$ for the NSR program. However, a State may demonstrate to the Administrator's satisfaction or EPA may demonstrate that VOC emissions in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations. After such a demonstration, the State would regulate VOC (or a subset of VOC) as a $PM_{2.5}$ precursor for the NSR program in that area. That is, the State would need to regulate construction and modification of stationary sources that increase emissions of VOC in that area to assure that these emissions do not interfere with reasonable further progress or the ability of that area to attain or maintain the $PM_{2.5}$ NAAQS.

We believe that this ''presumed-out'' approach is appropriate for VOC because of the complexity in assessing the role of VOC in $PM_{2.5}$ formation, as discussed previously. Where the effect of a pollutant's emissions on ambient $PM_{2.5}$ concentrations is subject to this degree of uncertainty, we do not have justification to establish a nationally-applicable presumption that the pollutant is a regulated NSR pollutant subject to the requirements of NSR for $PM_{2.5}$. Under the circumstances, we believe the best policy is to continue to regulate VOC under NSR as a precursor to ozone in all areas, which will potentially provide a co-benefit for $PM_{2.5}$ concentrations despite the uncertainty in $PM_{2.5}$ formation from VOC. As discussed previously, we do not find it appropriate to utilize the same approach for NO_X because the scientific data and modeling analyses provide more certainty that NO_X emissions are a significant contributor to ambient $PM_{2.5}$ concentrations.

Note that we intend to regulate high molecular weight VOC (with 25 carbon atoms or more and low vapor pressure) as direct $PM_{2.5}$ emissions because they are emitted directly as primary organic particles and exist primarily in the condensed phase at ambient temperatures. *See* section V.E following for more on the regulation of such ''condensables.''

Most commenters agreed with the ''presumed-out'' approach for VOC. One commenter said that the role of VOC in the formation of $PM_{2.5}$ is sufficiently understood to recommend a ''waiver'' approach for this pollutant in the same way as NO_X is treated for $PM_{2.5}$ in the rule.

As discussed previously, the reactions forming secondary organics are complex and the number of intermediate and final compounds formed is voluminous. Some of the best efforts to unravel the chemical composition of ambient organic aerosol matter have merely been able to quantify the concentrations of hundreds of organic compounds representing only 10 to 20 percent of the total organic aerosol mass. For this reason, SOA continues to be a significant topic of research and investigation. Accordingly, we do not agree with the commenter who suggested a waiver or ''presumed-in'' approach for VOC. We continue to believe that our ''presumed-out'' approach is most appropriate for VOC and have included this approach in the final rules.

6. Final Action on Ammonia

Ammonia (NH_3) is a gaseous pollutant that is emitted by natural and anthropogenic sources. Emissions inventories for ammonia are considered to be among the most uncertain of any species related to PM. Ammonia serves an important role in neutralizing acids in clouds, precipitation, and particles. In particular, ammonia neutralizes sulfuric acid and nitric acid, the two key contributors to acid deposition (acid rain). Deposited ammonia also can contribute to problems of eutrophication in water bodies, and deposition of ammonium particles may effectively result in acidification of soil as ammonia is taken up by plants. The NARSTO Fine Particle Assessment [8] indicates that reducing ammonia emissions where sulfate concentrations are high may reduce $PM_{2.5}$ mass concentrations, but may also increase the acidity of particles and precipitation. An increase in particle acidity is suspected to be linked with adverse human health effects and with an increase in the formation of secondary organic compounds. Based on this information and further insights gained from the NARSTO Fine Particle Assessment, it is apparent that the formation of particles related to ammonia emissions is a complex, nonlinear process.

Though recent studies have improved our understanding of the role of ammonia in aerosol formation, ongoing research is required to better describe the relationships between ammonia emissions, PM concentrations, and related impacts. The control techniques for ammonia and the analytical tools to quantify the impacts of reducing ammonia emissions on atmospheric aerosol formation are both evolving. Also, area-specific data are needed to evaluate the effectiveness of reducing ammonia emissions on reducing $PM_{2.5}$ concentrations in different areas, and to determine where ammonia decreases may increase the acidity of particles and precipitation.

Due to the considerable uncertainty related to ammonia as a precursor, our final rules do not require ammonia to be regulated as a $PM_{2.5}$ precursor but do give States the option to regulate ammonia as a precursor to $PM_{2.5}$ in nonattainment areas for purposes of NSR on a case-by-case basis. Consistent with our proposal, if a State demonstrates to the Administrator's satisfaction that ammonia emissions in a specific nonattainment area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations, the State would regulate ammonia as a $PM_{2.5}$ precursor under the NSR program in that nonattainment area. Once this demonstration is made, ammonia would be a ''regulated NSR pollutant'' under NA NSR for that particular nonattainment area, and the State would need to regulate construction and modification of stationary sources that increase emissions of ammonia in that area to assure that these emissions do not interfere with reasonable further progress or the ability of that area to attain or maintain the $PM_{2.5}$ NAAQS. In all other nonattainment areas in that State and nationally, ammonia would not be subject to the NSR program. In addition, the action of any State identifying ammonia emissions as a significant contributor to a nonattainment area's $PM_{2.5}$ concentrations, or our approval of a nonattainment SIP doing so, does not make ammonia a regulated NSR pollutant for the purposes of PSD in any attainment or unclassifiable areas nationally. This is consistent with our proposal (70 FR 66036) and no commenters took issue with the proposal. We also retain the ability to make a technical demonstration for any area in a State, if appropriate, to reverse the presumption and require ammonia to be addressed in that State's nonattainment area plan.

We elected to finalize the proposed approach because of continued uncertainties regarding ammonia emission inventories and the effects of ammonia emission reductions. Ammonia emission inventories are presently very uncertain in most areas, complicating the task of assessing potential impacts of ammonia emissions reductions. In addition, data necessary to understand the atmospheric composition and balance of ammonia and nitric acid in an area are not widely available, making it difficult to predict the results of potential ammonia emission reductions. Ammonia reductions may be effective and appropriate for reducing $PM_{2.5}$ concentrations in selected locations, but in other locations such reductions may lead to minimal reductions in $PM_{2.5}$ concentrations and increased atmospheric acidity. Research projects continue to expand our collective understanding of these issues, but at this time we believe this case-by-case approach for nonattainment areas is appropriate given that there is sufficient uncertainty regarding the impact of ammonia emission reductions on $PM_{2.5}$ concentrations in all nonattainment areas. In light of these uncertainties, we encourage States to continue efforts to better understand the role of ammonia in their fine particle problem areas.

Several commenters agreed with our ''presumed-out'' approach for ammonia. One of these commenters recommended that we recognize the role ammonia plays in $PM_{2.5}$ formation and develop a policy to require the minimization and mitigation of known emissions of ammonia, while another suggested that we require States to initiate comprehensive ambient air monitoring networks to determine the extent of local effects of ammonia.

Four commenters did not support treating ammonia as a $PM_{2.5}$ precursor under any circumstances. Three of these commenters stated that if EPA permits States to demonstrate that ammonia should be regulated as a $PM_{2.5}$ precursor for NSR purposes, we should make clear that ammonia emissions from the operation of an air pollution control system to control NO_X should not factor into such a demonstration.

Two commenters preferred that we use the ''presumed-in'' approach for ammonia, as for NO_X. One of these commenters stated that the ''presumed-out'' approach would improperly delegate our authority to regulate ammonia as a $PM_{2.5}$ precursor to the States and would reverse Congress' requirement to regulate PM precursors unless the emissions are not part of the problem, instead taking the approach that we will ''not regulate unless proven to be part of the problem.''

We continue to believe that the ''presumed-out'' approach is most appropriate for ammonia. As discussed previously, considerable uncertainties remain regarding ammonia emission inventories and the effects of ammonia emission reductions. As a result, we do not believe it advisable to adopt a ''presumed-in'' approach. However, where a State can gather sufficient data to demonstrate that reductions in ammonia emissions will decrease ambient concentrations of $PM_{2.5}$ in a particular nonattainment area, we believe that the State should be allowed to regulate ammonia emissions under its $PM_{2.5}$ NSR program for that area.

We do not believe that this approach improperly delegates authority to the States. The final rule establishes a general presumption for all nonattainment areas through this rulemaking process, and allows for the presumption to be modified by the State on a case-by-case basis with EPA approval. Under the Clean Air Fine

[8] NARSTO (2004) ''Particulate Matter Assessment for Policy Makers: A NARSTO Assessment.'' P. McMurry, M. Shepherd, and J. Vickery, eds. Cambridge University Press, Cambridge, England. ISBN 0 52 184287 5. *See* the docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2003–0062, or *http://www.narsto.org/section.src?SID=6.*

Particle Implementation Rule (72 FR 20586, April 5, 2007) (addressing various nonattainment plan elements other than NSR), we still retain the ability to make a technical demonstration for any area if appropriate to reverse the presumption and require ammonia to be addressed in its nonattainment area plan. As discussed previously in section V.A.1, we interpret the Act to allow the ''presumed-out'' approach adopted in the final rule.

We agree with the commenter who suggested that we continue research on the role of ammonia in the formation of $PM_{2.5}$. We believe that it is prudent to continue research on ammonia control technologies and the ammonia-sulfate-nitrate-SOA equilibrium before undertaking a broad national program to reduce ammonia emissions. As we develop a greater understanding about the potential air quality effects of reducing ammonia emissions in specific nonattainment areas, it may be appropriate for ammonia reduction strategies to be included in future SIPs. At this time, however, we believe that reducing SO_2 and NO_X emissions will achieve significant reductions in ambient $PM_{2.5}$ concentrations.

Regarding the comment related to ammonia emissions from NO_X control systems, we believe that a State should evaluate all sources of ammonia emissions when determining whether to regulate ammonia under its $PM_{2.5}$ NSR program for a particular nonattainment area. However, we also encourage States to be mindful of the potential tradeoff in terms of ambient $PM_{2.5}$ concentrations that may be related to reducing ammonia emissions from NO_X control systems.

B. Major Stationary Source Threshold for $PM_{2.5}$

The major NSR program applies to construction of major stationary sources and major modifications at major stationary sources. A stationary source is a ''major source'' if its actual emissions or its potential to emit for a specific pollutant equals or exceeds the major source threshold for that pollutant established in the Act. Different pollutants, including precursors, are not summed to determine applicability.

Sections 169 and 302(j) of the Act contain definitions of ''major emitting facility'' and ''major stationary source'' that apply to programs implemented under part C and subpart 1 of part D of the Act (PSD and NA NSR, respectively). Consistent with our proposal, these final rules follow these definitions for purposes of defining a major emitting facility or major stationary source that would be subject to major NSR. The thresholds set out in the definitions are applied to each relevant pollutant individually, that is, to direct $PM_{2.5}$ emissions and to emissions of each pollutant identified as a $PM_{2.5}$ precursor for the applicable NSR program. Under the final rules, the major source thresholds are as follows:

PSD	100 tpy for source categories listed in 40 CFR 51.166(b)(1)(i)(a) and 52.21(b)(1)(i)(a). 250 tpy for all other source categories.
NA NSR	100 tpy for all source categories.

No regulatory change is required to implement this approach to the major source thresholds for direct $PM_{2.5}$ emissions and the $PM_{2.5}$ precursors. *See* 40 CFR 51.165(a)(1)(iv)(a), 51.166(b)(1)(i), 52.21(b)(1)(i), and part 51, appendix S, section II.A.4.

This approach is consistent with how we treat other criteria pollutants that are covered by subpart 1 of part D of the Act. Nonattainment NSR programs under subpart 1 do not include a tiered classification system such as the one required for ozone nonattainment areas under subpart 2 of part D. We do not interpret subpart 4 of part D of the Act (creating ''serious'' and ''moderate'' classifications for PM_{10} nonattainment areas) as applying to $PM_{2.5}$.

Although our approach is consistent with sections 169 and 302(j) and subpart 1 of part D of the Act, it results in a higher major source threshold in $PM_{2.5}$ nonattainment areas than the major source threshold that applies in some PM_{10} nonattainment areas under subpart 4 of part D of the Act. This is because section 189(b) of the Act establishes a 70-tpy major source threshold for ''serious'' PM_{10} nonattainment areas while ''moderate'' PM_{10} nonattainment areas apply a 100-tpy major source threshold based on the definition in section 302(j). We do not believe the Act gives us the discretion to promulgate a lower major source threshold for pollutants such as $PM_{2.5}$ that are only subject to subpart 1 of part D of the Act.

Our emissions inventory data do not indicate that this situation will adversely impact attainment of the $PM_{2.5}$ NAAQS. These data indicate that a significant number of sources have actual $PM_{2.5}$ emissions in the 100 to 250 tpy range. Additionally, our more current inventory data show that the number of sources that would be covered as major sources by a lower major source threshold would not increase substantially unless the threshold were lowered to 20 tpy or below. Thus, even if EPA had the discretion to adopt a 70-tpy major source threshold for $PM_{2.5}$ nonattainment areas, our data indicate that few additional sources would be subject to the major NSR program in $PM_{2.5}$ nonattainment areas.[9]

We believe that States should consider such information in developing their own SIP-approved NSR programs. For example, if construction of $PM_{2.5}$ sources emitting 99 tpy with no major NSR controls and without mitigation would undermine a State's ability to achieve reasonable further progress or attain the $PM_{2.5}$ NAAQS, the State should consider imposing emissions controls or other requirements on these sources through the State's minor NSR program. Note that such programs are required under the existing statute and regulations to assure that the NAAQS are achieved. *See* section 110(a)(2)(C) of the Act and 40 CFR 51.160. In addition, States may address such sources through other elements in their nonattainment area SIPs that are not statutorily bound to the definition of major source, as the major NSR program is. We reiterate that since we do not interpret subpart 4 of the Act to apply to $PM_{2.5}$, we do not believe that we have discretion under section 302(j) of the Act to define a lower major source threshold for pollutants such as $PM_{2.5}$ that are only subject to subpart 1 of part D of the Act.

Some commenters indicated that State minor NSR programs would not be sufficient to address such sources due to interstate transport and the existence of interstate $PM_{2.5}$ nonattainment areas. These commenters indicated that a lower major source threshold for $PM_{2.5}$ sources located in designated nonattainment areas should be applied uniformly throughout the entire nonattainment area, which would not be possible when minor NSR programs are defined on a State-by-State basis.

We believe, to the contrary, that States can coordinate their minor NSR programs to address interstate $PM_{2.5}$ nonattainment areas, and we encourage them to do so. In addition, we note that the impacts of direct $PM_{2.5}$ emissions are generally felt primarily in the local area.

One commenter stated that in order to address the impact of high PM concentrations, the Act mandates EPA to define a criteria pollutant's NSR major threshold at levels less than 100 tpy. The commenter gave the example of

[9] *See* ''NEI–$PM_{2.5}$ Source Analysis'' in the docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2003–0062.

subparts 2 and 4 of part D of the Act, which define lower major source thresholds for certain classifications of ozone and PM_{10} nonattainment areas, respectively. The commenter argued that it is unreasonable for us to assert that subpart 4 does not apply to this rule because it regulates all PM with a diameter of less than 10 micrometers, which includes $PM_{2.5}$. The commenter believes that we recognized as much in our proposal preamble discussion of the options for implementing reasonably available control technology (RACT), where we discussed potential approaches that ''would be consistent with the approach set forth in the Act in subpart 4.'' 70 FR 66017. This commenter stated that a reasonable interpretation of the Act requires major sources of direct $PM_{2.5}$ emissions and precursor emissions to be defined at a baseline level of 70 tpy, and adjusted further downward as appropriate considering the characteristics and potential impacts of the pollutants.

We do not agree that subpart 4 of part D applies to $PM_{2.5}$ nonattainment areas. Subpart 4 was added to the Act by Congress specifically to address the PM_{10} NAAQS. We believe that the $PM_{2.5}$ standard should be implemented under subpart 1 of part D, which is the general provision of the Act related to NAAQS implementation. Part D of title I of the Act sets forth the requirements for SIPs needed to attain the NAAQS. Part D also includes a general provision under subpart 1, which applies to all NAAQS for which a specific subpart does not exist. Because the $PM_{2.5}$ standards were not established until 1997, the nonattainment plan provisions found in section 172 of subpart 1 apply. Subpart 4 on its face applies only to the PM_{10} standard. In general, the emphasis in subpart 4 on reducing PM_{10} concentrations from certain sources of direct $PM_{2.5}$ emissions can be somewhat effective in certain $PM_{2.5}$ nonattainment areas but not in all. Contributions to $PM_{2.5}$ concentrations are typically from a complex mix of sources of primary emissions and sources of precursor emissions, which form particles through reactions in the atmosphere. In addition, $PM_{2.5}$ differs from PM_{10} in terms of atmospheric dispersion characteristics, chemical composition, and contribution from regional transport.

A group of environmental commenters believed that EPA should be consistent with the stationary source size thresholds proposed for RACT in option 2, *see* 70 FR 66019/1. In our proposal preamble discussion of RACT, while we discussed developing a classification system for $PM_{2.5}$ nonattainment areas under section 172(a)(1) of subpart 1, we did not discuss subjecting $PM_{2.5}$ to the requirements of subpart 4. While our discussion of RACT contemplated a lower threshold for RACT applicability in some $PM_{2.5}$ nonattainment areas, we did not characterize this as defining a lower major source threshold. Moreover, section 302(j) defines a major stationary source as one that emits 100 tpy or more ''except as otherwise expressly provided.'' Since section 172 does not expressly provide EPA with the authority to promulgate a major source threshold below 100 tpy, we do not believe we are authorized to do so under subpart 1 of part D of the Act.

One commenter stated that the major source threshold for $PM_{2.5}$ emissions should be calculated using the current SO_2 and NO_X definitions of major source and significant emissions rate. Specifically, the commenter suggested that the ratio of these values (100 tpy and 40 tpy, respectively) should be multiplied by the significant emissions rate for direct $PM_{2.5}$ emissions (10 tpy; *see* section V.C following) to yield a $PM_{2.5}$ major source threshold of 25 tpy.

As previously stated, we do not believe that we have discretion under the Act to define a lower major source threshold under subpart 1 of part D of the Act. In any case, the major source thresholds and significant emissions rates for SO_2 and NO_X were not defined in relation to one another, and therefore their relationship would not provide a suitable basis for developing the $PM_{2.5}$ major source threshold from the $PM_{2.5}$ significant emissions rate. Major source thresholds are defined directly in the Act, while the significant emissions rates were codified independently in regulations through a modeling analysis of ambient impacts.

C. Significant Emissions Rate for Direct Emissions of $PM_{2.5}$

The determination of what should be classified as a modification subject to major NSR is based, in part, on a ''significant emissions rate.'' [10] The major NSR regulations define this term as a rate above which a net emissions increase will trigger major NSR permitting requirements, if the increase results from a major modification. Sources are exempt from major NSR requirements if the emissions increase resulting from a modification is below this rate because EPA considers such lower emissions increases to be *de minimis* for purposes of the major NSR program.

The significant emissions rates for the criteria pollutants other than $PM_{2.5}$ are given in the following table:

Criteria pollutant	Significant emissions rate (tpy)
Ozone	VOC: Any increase up to 40 tpy (dependent on NA classification).
	NO_X: Any increase up to 40 tpy (dependent on NA classification).
NO_2	NO_X: 40 tpy.
Particulate Matter	25 tpy, particulate matter emissions.
	15 tpy, PM_{10} emissions.
CO	50 or 100 tpy (dependent on NA classification).
SO_2	40 tpy.
Lead	0.6 tpy.

Significant emissions rates for additional (non-criteria) pollutants that are subject to the PSD program are contained in 40 CFR 51.166(b)(23) and 40 CFR 52.21(b)(23).

For direct emissions of $PM_{2.5}$, these final rules define the significant emissions rate as 10 tpy. This is the level that we proposed as our preferred option. This final significant emissions rate for direct $PM_{2.5}$ emissions is based fundamentally on the same approach that we used in setting the previous significant emissions rates for PM emissions and PM_{10} emissions.

Historically, the original significant emissions rate for PM (25 tpy of PM emissions) was set using a modeling analysis to determine the amount of PM emissions that a source could emit that

[10] For additional background on EPA's interpretation of modification and rationale for including significant emissions rates in defining major modifications, *see* 61 FR 38253–54 (Dec. 31, 2002).

would be unlikely to cause ambient impacts above 4 percent of the PM NAAQS (measured as total suspended particulate (TSP)).[11] Although a range of source configurations can yield a wide range of impacts per tpy of emissions, our review of typical configurations of major PM sources led us to the conclusion that a major modification that increased PM emissions by 25 tpy or less would be unlikely to increase 24-hour average concentrations of TSP by more than 4 percent of the 24-hour TSP NAAQS. Subsequently, when we set the significant emissions rate for PM_{10}, we adjusted the rate for PM emissions using the ratio of the 24-hour PM_{10} NAAQS to the 24-hour TSP NAAQS to derive the PM_{10} significant emissions rate of 15 tpy. We used the ratio of 24-hour NAAQS for this adjustment because that NAAQS was controlling for both PM and PM_{10}.

We used a conceptually similar methodology to derive the final $PM_{2.5}$ significant emissions rate from the rate for PM_{10}. However, because the 24-hour NAAQS is not controlling for $PM_{2.5}$, we revised the methodology to take into account the annual impact of emissions. *See* the proposal preamble for additional information on the methodology we used to develop the final significant emissions rate for direct $PM_{2.5}$ emissions (70 FR 66038).

Several commenters supported our approach to setting the significant emissions rate for direct $PM_{2.5}$ emissions and the level (10 tpy) based on the same methodology used for PM emissions and PM_{10} emissions. Numerous other commenters believe that our methodology was too conservative, and suggested a significant emissions rate of 15 tpy. Two commenters suggested that we use significant emissions rate of 5 tpy or less. Another commenter suggested that we could ''split the difference,'' using an option that could give States and companies some flexibility: Modifications less than 5 tpy of direct $PM_{2.5}$ emissions could be considered *de minimis*; modifications between 5 and 15 tpy of direct $PM_{2.5}$ emissions could choose to either demonstrate less than a 4 percent NAAQS increase or simply be subject; and modifications with increases of 15 or more tpy of direct $PM_{2.5}$ emissions would be subject.

We agree with commenters who indicated that we were correct in using the same methodology for direct $PM_{2.5}$ that was used to set the significant emissions rate for PM_{10} and PM emissions. We do not agree that using the same level as PM_{10} emissions (15 tpy) is warranted, given the demonstrated health effects of $PM_{2.5}$. Neither do we agree that a significant emissions rate of 5 tpy or less is warranted. While our screening model runs indicated that emissions increases in this range at facilities with short stacks can cause measurable increases in ambient $PM_{2.5}$ levels, we do not believe that facilities at the extremes should dictate the program for all sources.

We do not agree that inclusion of condensable emissions in future testing and applicability determinations (*see* section V.E) is grounds for increasing the SER for direct $PM_{2.5}$ emissions. The results of the modeling analysis that is the basis for the SER of 10 tpy is not affected by the nature of the direct $PM_{2.5}$ emissions (*i.e.*, condensable or not).

We also do not agree that the proportions of primary and secondary $PM_{2.5}$ that comprise ambient $PM_{2.5}$ concentrations is relevant to determining the appropriate SER for direct $PM_{2.5}$ emissions. Following our historic approach for PM and PM_{10}, we based our analysis on determining the size of a source of direct $PM_{2.5}$ emissions that would be expected to have an ambient impact of 4 percent or more of the NAAQS. This relationship holds true regardless of the origin of the particles that make up the ambient $PM_{2.5}$. The commenter's approach (*i.e.*, carrying out the analysis based on one-half of the NAAQS because primary $PM_{2.5}$ makes up only one-half of the ambient $PM_{2.5}$) implies that an increase in ambient $PM_{2.5}$ concentrations due to an increase in direct $PM_{2.5}$ emissions is somehow automatically matched by a like increase in the ambient concentration of secondary $PM_{2.5}$. We do not believe that this is a reasonable approach.

D. Significant Emissions Rates for $PM_{2.5}$ Precursors

Consistent with the preferred option in the proposal, we are setting significant emissions rates for $PM_{2.5}$ precursors at the levels for those pollutants already included in major NSR programs, as shown in the following table:

$PM_{2.5}$ precursor	Significant emissions rate (equal to or exceeding)
SO_2	40 tpy.
NO_X	40 tpy.
VOC	40 tpy.
Ammonia	Adopted in SIP.

VOC is presumed not to be a precursor to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of VOC from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations. Any State making such a demonstration would be required to adopt the 40-tpy significant emissions rate unless it demonstrates that a more stringent significant emissions rate (lower rate) is more appropriate.

For ammonia, States determining in their SIPs that control of ammonia is a necessary part of a $PM_{2.5}$ control strategy in a particular area must set the significant emissions rate for ammonia. Otherwise, according to the definition of ''significant'' in the PSD program, ''any emissions rate'' would be considered significant. *See* 40 CFR 51.166(b)(23)(ii).

One commenter stated that we should not leave it to States to set significant emissions rates for ammonia. The commenter argued that EPA's scientists should shoulder this responsibility, and the resulting significant emissions rate should be subject to notice and comment.

In the final rule, we are allowing those States that determine in their SIPs that control of ammonia is necessary to set the significant emissions rate for ammonia, based on the information developed for each attainment demonstration. At this time, we believe this is more appropriate than EPA setting a single, nationwide significant emissions rate because of the different role ammonia plays in the formation of $PM_{2.5}$ from one area to another, as well as our still-evolving understanding of the impact of reducing ammonia emissions on ambient $PM_{2.5}$ concentrations. In addition, we note that the SIP revisions that States undertake to add ammonia to their NA NSR

[11] The EPA established the original NAAQS for PM in terms of ambient concentrations of TSP (40 CFR 51.100(ss)). Source applicability for PM was determined in terms of amounts of PM emissions (40 CFR 51.100(pp)) from the affected source. In 1993, at 58 FR 31622 (*see* page 31629), EPA eliminated TSP as the ambient indicator for measuring compliance with both the NAAQS and PSD increments. Thus, EPA no longer considers the TSP ambient indicator to be a regulated NSR pollutant. The EPA is currently evaluating whether it remains appropriate to consider PM as a ''regulated NSR pollutant.'' There is no NAAQS for TSP/PM, rather the standards address specific size fractions of PM, namely PM_{10} and $PM_{2.5}$. However, PM emissions, based on in-stack measurements, continue to be regulated under PSD because of the use of such emissions for evaluating compliance under a variety of CAA section 111 new source performance standards (40 CFR part 60). Given the regulatory changes and positions taken by EPA since 1993, EPA is re-evaluating the implications for PM emissions in the NSPS program (and other air programs) and will act accordingly to clarify this issue in the near-term.

programs are subject to notice and comment rulemaking procedures.

Numerous commenters supported our proposal to set significant emissions rates for $PM_{2.5}$ precursors at the levels already used for other purposes in the NSR program. One commenter indicated that since roughly half or more of ambient $PM_{2.5}$ is derived from precursors, 10 tpy would be an appropriate significant emissions rate for $PM_{2.5}$ precursor emissions. Another commenter suggested a significant emissions rate of 4 tpy for SO_2 and 2 tpy for NO_X, based on the percentage of $PM_{2.5}$ that is typically derived from these precursors and the ratios between the existing significant emissions rates for these pollutants and the SO_2 and NO_2 annual NAAQS. Since the ambient concentrations of $PM_{2.5}$ vary across the country and since significant emissions rates have not been developed as a ratio of the NAAQS, we do not believe that the suggested approach is appropriate.

As discussed in the proposal, the use of existing significant emission rates where the $PM_{2.5}$ precursor is also regulated under NSR as a separate criteria pollutant harmonizes the NSR program for $PM_{2.5}$ with the NSR programs for those other criteria pollutants. This enables a source to determine the NSR impacts of proposed modifications by reference to a single significant emissions rate for each pollutant, and enables streamlining of determinations regarding the applicable control technology and analysis of air quality impacts into a single and comprehensive decision making process for both $PM_{2.5}$ and other criteria pollutants that also cover $PM_{2.5}$ precursors. This also follows precedent. When ozone became a criteria pollutant, EPA used the NO_X significant emissions rate from the NO_2 program.

The burden imposed is not the only factor to consider when setting the significant emission rates for precursors—the process for determining the significant emission rates must also take into account the accuracy and certainty with which we can predict the effect of the precursors on $PM_{2.5}$ concentrations. It is difficult to determine the ambient air quality effects that result from a single source of emissions of $PM_{2.5}$ precursors. There are conservative screening models for predicting impacts of large NO_X and SO_2 sources on ambient $PM_{2.5}$ concentrations. We conducted a range of modeling analyses to determine the amount of $PM_{2.5}$ precursor emissions needed to show an increase in ambient $PM_{2.5}$ concentrations. These analyses showed that precursor emissions probably have some localized impacts, but that most impact is farther downwind as precursors have the time to convert to $PM_{2.5}$. In addition, the modeling available at this time does not provide sufficient information to estimate impacts of emissions from individual sources of ammonia and VOC on ambient $PM_{2.5}$ concentrations. While we know that precursors contribute to the formation of $PM_{2.5}$ in the ambient air, the degree to which these individual precursors contribute to $PM_{2.5}$ formation in a given location is complex and variable. There are competing chemical reactions taking place in the atmosphere, and meteorological conditions play a significant role in the size and characteristics of particle formation. For these reasons, we do not believe that we have adequate data on the impacts of precursor emissions from individual sources to override the administrative advantages of setting the significant emissions rates for SO_2, NO_X, and VOC for purposes of the $PM_{2.5}$ NSR program at the same levels that are already used for other purposes in the major NSR program.

E. Condensable PM Emissions

In this final NSR rule, EPA will not require that States address condensable PM in establishing enforceable emissions limits for either PM_{10} or $PM_{2.5}$ in NSR permits until the completion of a transition period, as described herein. In response to significant comments on the variability of test methods available for measuring condensable emissions, we have adopted this transition period approach to allow us to assess the capabilities of the test methods and possibly revise them to improve performance. The transition period will end January 1, 2011 unless EPA advances this date through the rulemaking process described below.

Subsequent to the completion of the test methods assessment, EPA will be conducting a notice and comment rulemaking to codify new or revised test methods. Once these new or revised test methods are in place, States will have the tools necessary to issue NSR permits addressing condensable PM. Thus, as part of the test methods rulemaking, we will take comment on an earlier closing date for the transition period in the NSR program if we are on track to meet our expectation to complete the test methods rule much earlier than January 1, 2011. In the meantime, however, we are establishing January 1, 2011 as the latest possible end date for the NSR transition period because this is also the end of the transition period for SIP purposes as described in the Clean Air Fine Particle Implementation Rule (*see* section II.L in 72 FR 20586, April 25, 2007). Prevention of Significant Deterioration and NA NSR permits issued after the effective date of this NSR implementation rule but prior to the end of the transition period for the NSR program are not required to account for condensable emissions in $PM_{2.5}$ or PM_{10} emissions limits. After January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), EPA will require that NSR permits include limits of condensable emissions, as appropriate. Prior to this date, States are not prohibited from establishing emissions limits in NSR permits that include the condensable fraction of direct $PM_{2.5}$.

As noted in the proposal preamble, certain commercial or industrial activities involving high temperature processes (*e.g.*, fuel combustion, metal processing, and process cooking operations) emit gaseous pollutants into the ambient air, some of which rapidly condense into particle form. The constituents of these condensed particles include, but are not limited to, organic materials, sulfuric acid, and metals and metal compounds. We consider such condensable emissions to be a component of direct PM emissions. Specifically, direct PM emissions consist of both the ''filterable fraction'' which already exist in particle form at the elevated temperature of the exhaust stream, and the ''condensable fraction'' which exist in gaseous form under exhaust stream conditions but condenses rapidly in the ambient air.

Because condensable PM emissions exist almost entirely in the 2.5 micrometer range and smaller, these emissions are inherently more significant for $PM_{2.5}$ than for prior PM standards addressing larger particles. Condensable PM emissions commonly make up a significant component of direct $PM_{2.5}$ emissions. Therefore, we believe that it is important that the air quality management of PM promote a comprehensive approach to the control of condensable PM.

We proposed on November 1, 2005 to clarify that condensable PM emissions must be included when determining whether a source is subject to the major NSR program. We noted in the proposal that our prior guidance [12] had clarified that PM_{10} includes condensable PM and

[12] Leter from Thompson G. Pace, Acting Chief, Particulate Matter Programs Branch, to Sean Fitzsimmons, Iowa Department of Natural Resources (Mar. 31, 1994) (available at *http://www.epa.gov/Region7/programs/artd/air/nsr.nsrmemos/cpm.pdf* and in the docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2003–0062).

that, where States expect condensable PM emissions to be in higher amounts, States should use methods that appropriately measure condensable PM emissions. In addition, we pointed out that the 2001 consolidated emissions reporting rule (CERR) requires States to report condensable emissions in each inventory revision (*see* 67 FR 39602, June 10, 2001) and that Method 202 in appendix M of 40 CFR part 51 quantifies condensable PM. We also noted that States have not applied this existing guidance consistently.

We received a number of comments on whether NSR programs should account for condensable PM emissions in light of the current state of knowledge of and uncertainties around the measurement of direct $PM_{2.5}$. Several commenters supported our proposal to require the inclusion of condensable PM emissions in NSR applicability determinations. On the other hand, several other commenters expressed opposition to including condensables at this time and raised concerns about the availability and implementation of test methods and related issues about the uncertainties in existing data for condensable $PM_{2.5}$. As a result of the concerns, these commenters believed EPA would be premature in requiring a comprehensive evaluation of condensable $PM_{2.5}$, especially as it related to developing any new emissions limits for stationary sources.

One commenter noted that regulation of condensable PM at this time will impede, rather than facilitate, expeditious attainment of the $PM_{2.5}$ standard. Another commenter expressed concern about the potential for retroactive enforcement over applicability decisions made in good faith, and for retroactive application of the new test method to assert violations of an emission limit, where the applicability decision or the emission limit was originally based on flawed testing/estimating methodology. Several commenters raised serious concerns about the availability and implementation of accurate test methods and emissions factors for condensable $PM_{2.5}$. They further stated that regulation of condensable $PM_{2.5}$ emissions would be appropriate only after we have developed a workable transitional strategy that ensures existing major sources are not placed in ''NSR jeopardy'' for physical and operational changes undertaken before new test methods and other requirements for condensable $PM_{2.5}$ are established.

In recognition of these concerns, both as they apply to the NSR program and the broader air program, we have adopted a transition period during which NSR permits need not address limits of condensable $PM_{2.5}$ emissions. During this transition period, EPA will undertake a collaborative testing effort with industry, National Association of Clean Air Agencies (NACAA), and other stakeholders to assess and improve the effectiveness and accuracy of the available or revised test methods. The purpose of the stakeholder testing projects will be to collect new direct filterable and condensable $PM_{2.5}$ emissions data using methodologies that provide data more representative of sources' direct $PM_{2.5}$ emissions. The EPA, States, and others will use these data to establish or improve emissions factors and to define more representative source emissions limits in permits.

The EPA acknowledges the legitimate concerns raised by commenters concerning potential exposure to retroactive enforcement and has established rules to address this issue. The EPA will not revisit applicability determinations made in good faith prior to the end of the transition period, insofar as the quantity of condensable PM emissions are concerned, unless the applicable implementation plan clearly required consideration of condensable PM. Likewise, EPA will interpret PM emissions limitations in existing permits or permits issued during the transition period as not requiring quantification of condensable $PM_{2.5}$ for compliance purposes unless such a requirement was clearly specified in the permit conditions or the applicable implementation plan.

After the end of the transition period (January 1, 2011 or any earlier date established in the upcoming rulemaking codifying test methods), EPA will require that all NSR applicability determinations for $PM_{2.5}$ and PM_{10} address condensable emissions as applicable, and the source may not rely on calculations made for previous determinations that did not include an accurate accounting of condensables. Additionally, compliance with these limits must be determined using the promulgated validated test methods that are applicable after that date. Moreover, after that date, we expect that condensable PM emissions will be addressed in all other aspects of the major NSR program, such as impact analyses under PSD and offsets under NA NSR. *See* 72 FR 20586, April 25, 2007 for the discussion of the transition period as it applies to the other elements of the air program in the final Clean Air Fine Particle Implementation Rule.

Although EPA is not requiring that State NSR programs address condensable emissions of PM until the end of the transition period, States that have developed the necessary tools are not precluded from acting to measure and control condensable PM emissions in NSR permit actions prior to the end of the transition period, especially if it is required in an applicable SIP. To the extent that a State has the supporting technical information and test methods, the State may assess the capabilities of current control technologies, possible modifications to such technologies, or new technologies as appropriate relative to control of condensable $PM_{2.5}$ emissions. As an example, a specific approach for controlling condensable PM could be a change in control device operating temperature to improve emissions reductions. We also note that it is important that implementation of any new or revised emissions limits and test methods that account for condensable emissions should be prospective and clearly differentiated from existing NSR permit requirements. This will avoid confusion over the compliance status relative to existing PM emissions limits that were not developed considering the condensable portion.

Notwithstanding the issues and uncertainties related to condensable PM, we encourage States to begin immediately to identify measures for reducing condensable PM emissions in major NSR permit actions, particularly where those emissions are expected to represent a significant portion of total PM emissions from a source.

F. Prevention of Significant Deterioration (PSD) Program Requirements

To receive a permit for a new major source or a major modification, sources subject to PSD must:

- Install Best Available Control Technology (BACT).
- Conduct air quality modeling to ensure that the project's emissions will not cause or contribute to either—

—A violation of any NAAQS or maximum allowable pollutant increase (PSD increment); or

—An adverse impact on any Class I area ''air quality related value'' (AQRV).

- As required, comply with preconstruction monitoring requirements.

This final action regarding each of these elements is discussed in the following sections.

1. How must BACT be implemented for $PM_{2.5}$?

We are not making any change to our current regulations or policy for implementing BACT requirements at a major source that is subject to the requirements of the PSD program. Accordingly, if a new major source will emit, or have the potential to emit, a significant amount of a regulated NSR pollutant in an attainment area for that pollutant, the source must apply BACT for each emissions unit that emits the pollutant. In addition, if a physical or operational change at an existing major source will result in a significant emissions increase and a significant net emissions increase of a regulated NSR pollutant in an attainment area for that pollutant, the source must apply BACT to each proposed emissions unit experiencing a net increase in emissions of that pollutant as a result of the physical or operational change in the unit. Under the $PM_{2.5}$ PSD program, these requirements will apply to direct $PM_{2.5}$ emissions; SO_2 emissions; NO_X emissions, unless a State demonstrates that NO_X is not a significant contributor to ambient $PM_{2.5}$ concentrations in that area; and to VOC if identified by a State as a precursor in the $PM_{2.5}$ attainment area where the source is located.

2. How does EPA plan to address $PM_{2.5}$ Increments, Significant Impact Levels (SILs), and Significant Monitoring Concentrations (SMCs)?

On November 1, 2005, we proposed a rule to implement the $PM_{2.5}$ NAAQS, including proposed revisions to the NSR program (70 FR 65984). In that proposal, we indicated our intent to propose a separate rule for developing $PM_{2.5}$ increments, SILs, and SMCs and sought comments on general approaches for developing these values. We proposed $PM_{2.5}$ increments, SILs, and SMCs in a rule dated September 21, 2007. 72 FR 54112. We intend to address comments received on these components of the $PM_{2.5}$ PSD program when we finalize that proposed rule.

3. What is the ambient air quality analysis requirement for $PM_{2.5}$?

All sources subject to PSD review must perform an ambient air quality impact analysis to show that the emissions from the source will not cause or contribute to a PSD increment or NAAQS violation. *See* section 165(a)(3) of the CAA; 40 CFR 51.166(k) and 52.21(k). We did not propose, and our final rules do not contain, any changes to the regulations on air quality impact analyses for purposes of the $PM_{2.5}$ NSR program. Accordingly, sources will be required to perform this analysis for the $PM_{2.5}$ NAAQS and, when finalized, $PM_{2.5}$ increments. Such analyses must consider how a source, in combination with other sources in the area, will impact air quality at existing $PM_{2.5}$ monitor locations, as well as at other locations that are appropriate for comparing predicted $PM_{2.5}$ concentrations to the NAAQS based on $PM_{2.5}$ monitor siting requirements and recommendations.

4. How must the PSD preconstruction monitoring requirement be implemented for $PM_{2.5}$?

Sources subject to PSD are subject to preconstruction ambient air quality monitoring requirements. *See* sections 165(a)(7) and 165(e) of the Act and 40 CFR 51.166(m) and 52.21(m). The PSD permitting requirements provide that continuous preconstruction ambient air quality monitoring must be conducted for any criteria pollutant emitted in significant amounts. Under 40 CFR 51.166(i)(5) and 52.21(i)(5), the reviewing authority has the discretion to exempt an applicant from this monitoring requirement if:

- The maximum modeled concentration for the applicable averaging period caused by the proposed significant emissions increase (or net emissions increase) is less than the prescribed SMC; or
- The existing monitored ambient concentrations are less than the prescribed SMC.

A source may also use existing data as a surrogate for preconstruction monitoring if the existing monitored data record is determined to be representative of the project's location.

We proposed five options for how to address preconstruction monitoring for $PM_{2.5}$. We are adopting a combination of options 1 and 3 from the proposal, primarily because we believe that it reflects existing procedures for other regulated NSR pollutants. The following sections summarize the major comments received on each option and explain why we are not adopting particular options.

Option 1—Require Preconstruction Monitoring for All Sources But Exempt on a Case-by-Case Basis

Generally, commenters who supported option 1 believed the option gives regulatory agencies enough flexibility to address sources with unique characteristics. One commentator stated that another benefit is that this option would avoid unnecessary installation of new $PM_{2.5}$ monitors and redundant preconstruction monitoring.

Another commenter, however, believed option 1 to be overly burdensome until EPA develops an SMC. The commenter argued that for example, there are many upcoming PSD projects in their State, which would be located in extremely remote areas where there are no local or regional $PM_{2.5}$ emission sources, so there would be no need to collect such data for these areas. Additionally, one group of commenters stated that option 1 appeared to be ''streamlining'' preconstruction permit requirements, which is not the intention of the Act's PSD provisions, and that EPA does not have the authority to exempt sources from the requirements of section 165(e)(2).

We agree with the commenter that recommended combining option 3 (the use of a 24-hr $PM_{2.5}$ SMC) with option 1 and are finalizing this approach. We have proposed an SMC for $PM_{2.5}$ in the rulemaking on increments, SILs, and SMCs (72 FR 54112, September 21, 2007). Our regulations at 40 CFR 51.166(i)(5) and 52.21(i)(5) have allowed the use of an SMC as screening tool for identifying when an impact is *de minimis* and there is thus little or no value in gathering preconstruction monitoring data The use of *de minimis* levels of this nature (such as significant emission rates and significant impact levels) is supported by court precedent interpreting the NSR provisions of the Act. *Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360 (DC Cir. 1979). (''Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide [an] exemption when the burdens of regulation yield a gain of trivial or no value.'')

Option 2—Exempt All Sources From Preconstruction Monitoring

Under option 2, we proposed to exempt all $PM_{2.5}$ sources from preconstruction monitoring through a blanket determination that the existing $PM_{2.5}$ monitoring network is sufficient. One commenter who preferred option 5 (described subsequently) was also supportive of option 2. This commenter noted that preconstruction monitoring is expensive and can significantly delay a project. The commenter also pointed out that it is very difficult to locate monitors for both direct $PM_{2.5}$ and precursors because precursors may transport over long distances before transforming into $PM_{2.5}$. The commenter indicated that we should not rely on the existing regulations, which are already known to be problematic.

One comment letter from a group of environmental advocacy organizations specifically opposed option 2. These

commenters noted that spatial gradients can be significant for $PM_{2.5}$, especially for direct $PM_{2.5}$ emissions, and that the existing monitoring network is severely limited in its spatial coverage, most especially in attainment areas where PSD preconstruction monitoring requirements apply. The commenters indicated that to make a blanket determination that the existing network suffices for any source, regardless of where it might choose to locate, would be absurd.

We decided not to finalize option 2 because we do not believe that the current network will be sufficient for all existing and potential new sources. As stated in the proposal preamble, we believe that the existing $PM_{2.5}$ monitoring record has the following limitations:

- The $PM_{2.5}$ monitoring data record would require spatial interpolation between monitors for the determination of appropriate concentrations at the project's location.
- Use of existing monitored data will not increase the $PM_{2.5}$ monitoring data record to confirm or contradict conventional perceptions.
- The $PM_{2.5}$ monitoring data record assumes that local hot spots of high $PM_{2.5}$ concentrations do not exist or are already being monitored, which may not be true in all cases.
- Automatic acceptance of existing measurements does not follow our current policy that a case-by-case determination needs to be made to determine whether preconstruction ambient monitoring is necessary.
- When used with the impact modeling, separate concentrations of direct and precursor-formed PM are needed.

Option 3—Use SMC's To Exempt Sources From Preconstruction Monitoring

Several commenters supported this option adding that this approach follows existing procedures to justify the exclusion of preconstruction monitoring requirements when source impacts are less than the SMC or when sufficient representative data exists. One group of commenters stated that EPA's proposed options 1 and 3, which would allow case-by-case or *de minimis* exemptions from the monitoring requirements, are ill-conceived as a matter of public policy and contradict the Act's PSD provisions.

We agree with the commenters that support adopting option 3 because a combination of options 1 and 3 reflects existing procedures for other regulated NSR pollutants. As discussed previously, a *de minimis* exemption from monitoring requirements is supported by court precedent interpreting the PSD provisions of the Act. We do not consider it sound policy to require gathering additional data when it is unnecessary to demonstrate that a proposed source or modification will not adversely impact air quality.

Option 4—Use Existing PM_{10} Data

We proposed using the available large PM_{10} data record combined with the recently acquired $PM_{2.5}$ data to provide representative ambient measurements for most sources. One comment letter from an industry group opposed any requirement for preconstruction monitoring, and endorsed option 4 if nationally gathered $PM_{2.5}$ data is not available. Three commenters specifically opposed option 4. One comment letter from an environmental advocacy organization stated that option 4 is illegal on its face, to the extent that EPA intends it as a universally available alternative. This comment indicated that some individual sources might be able to demonstrate that PM_{10} monitoring could fulfill the statutory requirements and purposes of $PM_{2.5}$ monitoring (*e.g.*, with sufficiently protective assumptions about $PM_{2.5}$/PM_{10} proportions), but due to the variability in the relationship between $PM_{2.5}$ and PM_{10}, EPA cannot categorically allow this substitution. Two other commenters stated that option 4 was not a viable approach due to the convoluted nature of attempting to infer $PM_{2.5}$ concentration from PM_{10} monitoring data for source-specific applications.

We decided not to finalize option 4. As we recognized in the proposal preamble, the differences in characteristics between $PM_{2.5}$ and PM_{10} and our limited understanding of their relationship are problematic for this application. We do not believe that generalized factors to convert PM_{10} concentrations to $PM_{2.5}$ concentrations sufficiently reflect important industry-specific and spatially-related characteristics of $PM_{2.5}$. In addition, removing altogether the obligation to provide preconstruction $PM_{2.5}$ ambient monitoring data would eliminate industry's contribution to the $PM_{2.5}$ data record when source impacts are more than *de minimis*.

Option 5—Exempt Sources From Preconstruction Monitoring if No SMC Is Established

We noted in the proposed rule that the existing regulations at 40 CFR 51.166(i)(5)(iii) and 52.21(i)(5)(ii) could be interpreted to allow a reviewing authority to exempt an applicant from preconstruction monitoring for any pollutant for which we have not established an SMC. These provisions state that a source may be exempted from preconstruction monitoring ''if * * * the pollutant is not listed in'' the list of pollutants for which SMC have been set.[13] The original rationale for this exemption is based on the lack of adequate methods for measuring ambient concentrations of pollutants not on the list. *See* 45 FR 52709, 52723–52724. We requested comment on this interpretation and any other legal or policy rationale that could support applying the text of these provisions to exempt sources from preconstruction monitoring if we elected not to define an SMC for $PM_{2.5}$.

One commenter stated that option 5 is the most practicable to implement until an SMC can be established and any potential gaps in the monitoring network can be filled. Two commenters question the legality of option 5 under the Act. They added that whatever may have been the case when the existing list of SMCs was adopted, methods now exist for conducting the monitoring required under section 165(e)(2). We decided not to finalize option 5, and have proposed an SMC rule for $PM_{2.5}$.

In conclusion, we are finalizing a combination of options 1 and 3 from the proposal, since we believe that it reflects existing procedures for other regulated NSR pollutants. Once we finalize an SMC for $PM_{2.5}$, the reviewing authority will have the discretion to exempt a source from the preconstruction monitoring requirement if the projected $PM_{2.5}$ ambient impact of the source is below the $PM_{2.5}$ level promulgated in our rules. In addition, additional preconstruction monitoring data may not be necessary based on the availability of existing representative monitoring data in the area, as discussed previously.

G. Nonattainment New Source Review (NA NSR) Requirements

To receive a permit for a new major source or a major modification, sources subject to NA NSR must:

- Install Lowest Achievable Emission Rate (LAER) control technology;
- Offset new emissions with creditable emissions reductions;

[13] These sections actually cross-reference the list at 40 CFR 51.166(i)(8)(i) and 52.21(i)(8)(i), however we renumbered those paragraphs to paragraph (i)(5)(i) of those provisions in the December 31, 2002 NSR reform rule and inadvertently overlooked correcting the cross-references in paragraphs (i)(5)(ii) and (i)(5)(iii). *See* 67 FR 80186. As proposed, in this final action we have corrected this misnumbering and others in this section.

- Certify that all major sources owned or operated by the applicant in the same State are in compliance; and
- Conduct an alternative siting analysis demonstrating that the benefits of the proposed source significantly outweigh the environmental and social costs.

We did not propose, nor are we finalizing, any revisions to the first, third, and fourth of these requirements. Thus, these requirements apply for purposes of $PM_{2.5}$ and its designated precursors just as they apply for other criteria pollutants and their designated precursors. In the remainder of this section G, we discuss our final actions related to offsets for direct $PM_{2.5}$ emissions and emissions of $PM_{2.5}$ precursors.

1. What is the required offset ratio for direct $PM_{2.5}$ emissions?

Under section 173 of the Act, all major sources and major modifications at existing major sources within a nonattainment area must obtain emissions reductions to offset any emissions increases resulting from the project in an amount that is at least equal to the emissions increase, and that is consistent with reasonable further progress towards attainment. We refer to the proportional difference between the amount of the required offsets to the amount of emissions increase as the ''offset ratio.''

The Act specifies an offset ratio for several situations. In ozone nonattainment areas subject to subpart 2 (of title I, part D of the Act), the ratio is set between 1.1:1 and 1.5:1 depending on the area's level of classification pursuant to subpart 2. For other nonattainment areas, the Act establishes a minimum offset ratio of 1:1 pursuant to subpart 1 of title I, part D of the Act.

As proposed, we are finalizing the offset ratio for direct $PM_{2.5}$ emissions as at least 1:1 on a mass basis because the $PM_{2.5}$ program is being implemented under subpart 1 of the Act. The commenters on this issue generally agreed that our regulations should require an offset ratio of at least 1:1 pursuant to subpart 1.

A few commenters indicated that a lower ratio could be acceptable on a source-specific basis if accompanied by a modeling analysis demonstrating a net air quality benefit. One commenter suggested that such a demonstration would be possible when a direct $PM_{2.5}$ emissions increase from a tall stack is being offset by ground-level $PM_{2.5}$ emission reductions. Applying diesel retrofit technology to bus and truck fleets is an example of how ground-level $PM_{2.5}$ emission reductions could be achieved. We do not believe that a lower offset ratio is authorized under subpart 1, which prescribes an offset ratio of at least 1:1, and therefore we have not adopted this approach in our final rules.

Some of the commenters disagreed regarding whether an offset ratio of at least 1:1 under subpart 1 represents a ceiling or a floor on the level we can prescribe in our regulations. We interpret section 173 of the Act to allow higher offset ratios where necessary to achieve reasonable further progress. Accordingly, we believe that States may establish higher offset ratios in their State programs if they wish, but we do not believe that it would be appropriate for us to do so for $PM_{2.5}$ in national regulations. We do not have cause to believe a higher ratio is necessary for $PM_{2.5}$ in each area of the country and prefer to leave this to the discretion of States. We do not believe that the higher offset ratios required for ozone precursors under subpart 2 apply in any way to direct $PM_{2.5}$ emissions or $PM_{2.5}$ precursors.

2. Which precursors are subject to the offset requirement?

Consistent with our proposal, the pollutants that are designated as $PM_{2.5}$ precursors in a particular area are subject to the offset requirement in that area. Accordingly, SO_2 is subject to offsets in all $PM_{2.5}$ nonattainment areas. As a ''presumed-in'' precursor, NO_X will be subject to offsets unless a State obtains an exemption for its NSR program through a demonstration that NO_X emissions in a particular area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations. As ''presumed-out'' precursors, VOC and ammonia would be subject to offsets only in areas where the State has demonstrated that these emissions are significant contributors to the area's ambient $PM_{2.5}$ concentrations. Two commenters on this issue agreed with this approach; one commenter recommended that we not require offsets for any $PM_{2.5}$ precursors. We believe that it is appropriate to offset emissions increases of all precursors that have been established to contribute to the $PM_{2.5}$ nonattainment problem in a particular area.

3. What is the required offset ratio for $PM_{2.5}$ precursors?

As discussed previously, the Act requires that a source obtain offsets for emissions increases that occur in a nonattainment area. As with $PM_{2.5}$ direct emissions, the minimum offset ratio permitted under subpart 1 of the Act is at least 1:1. Based on these requirements of the Act, we are finalizing our proposal that an offset ratio of at least 1:1 applies where a source seeks to offset an increase in emissions of a $PM_{2.5}$ precursor with creditable reductions of the same precursor. This offset ratio applies for all pollutants that have been designated as $PM_{2.5}$ precursors in a particular nonattainment area.

Most commenters agreed with this approach. A few commenters indicated that an offset ratio of less than 1:1 for precursor emissions of $PM_{2.5}$ should be allowed only if there is a net air quality benefit and if the lower ratio is justified by air quality modeling analysis. They noted that for $PM_{2.5}$ precursors, chemical reactivity modeling demonstrations should be developed and approved that are, at a minimum, capable of determining the impacts of the precursor emissions on the air quality in the nonattainment area in which the source is located. As noted previously, we do not believe that any offset ratio less than 1:1 is permissible under subpart 1.

One commenter stated that consistent with the statutory scheme for ozone laid out in section 182, and given the severity of the health risks associated with $PM_{2.5}$, EPA must require offsets of at least 1.15:1 for $PM_{2.5}$ precursors in ''moderate'' nonattainment areas, and must increase the offset ratio in ''serious'' nonattainment areas or in areas that request extensions of their attainment deadlines. As mentioned previously, we do not believe that subpart 2 of the Act (which includes section 182) has any relevance to $PM_{2.5}$ or its precursors. Subpart 2 is specific to ozone. In addition, we are implementing the $PM_{2.5}$ program under subpart 1. Nevertheless, under the Act, we believe that a State may require higher offset ratios if it determines that they are necessary to achieve reasonable further progress. For the reasons discussed previously with respect to direct $PM_{2.5}$, we do not believe that it is appropriate for us to set higher offset ratios for $PM_{2.5}$ precursors on a national basis.

Two commenters requested that we make clear in the final rule that an increase in precursor emissions need only be offset once, even if the increase triggers nonattainment NSR under, for example, both the ozone and $PM_{2.5}$ programs. We agree with these commenters and are clarifying that a precursor emissions increase only needs to be offset once. A permit applicant will not, for example, need to obtain two sets of offsets for NO_X emissions if NO_X is regulated as a precursor both for ozone and $PM_{2.5}$ in the area. The NO_X precursor emissions need only be offset once in accordance with the applicable

ratio. To the extent a higher ratio applies for ozone under subpart 2, the applicant would have to obtain offsets at the higher ratio. However, when the offset ratios are the same, both requirements can be met with a single set of NO_X offsets.

4. Is interpollutant trading allowable to comply with offset requirements?

In this final rule, we are allowing limited interpollutant trading for purposes of offsets only (and not netting) under the $PM_{2.5}$ NA NSR program. Specifically, the final rules allow interpollutant trading only based on a trading ratio established in the SIP as part of the attainment demonstration approved for a specific nonattainment area, on a statewide basis, or in a regional, multi-state program. This differs from our proposal in that the final rules do not allow interpollutant trading on a case-by-case basis as part of an individual NA NSR permitting process. For the purpose of offsets in the NA NSR program for $PM_{2.5}$, the final rules allow reductions in direct $PM_{2.5}$ emissions to offset precursor emissions increases, emissions reductions of one precursor to offset emissions increases of another precursor, and reductions in precursor emissions to offset direct $PM_{2.5}$ emissions increases.

We have completed a technical assessment to develop preferred interpollutant trading ratios that may be used for the purposes of $PM_{2.5}$ offsets, where appropriate. The preferred ratios were generated with a $PM_{2.5}$ response surface modeling (RSM) approach based on the EPA's Community Multi-Scale Air Quality (CMAQ) model. This RSM approach allows one to distinguish the impact of direct and precursor emissions from particular source groupings on total $PM_{2.5}$ concentrations within nine specific urban areas and broadly across U.S. regions. This approach was recently applied by the Agency to inform development of potential $PM_{2.5}$ control strategies as part of the Regulatory Impact Assessment (RIA) for the final $PM_{2.5}$ NAAQS.[14] Based on results from the RSM, we determined the distribution of predicted ratios for urban areas and regions across the country and developed the preferred ratios with a goal to be environmentally protective. The technical approach with details on data and modeling inputs are fully described in a technical memo to the docket, ''Details on Technical Assessment to Develop Interpollutant Trading Ratios for $PM_{2.5}$ Offsets.'' [15] Use of the preferred ratios is recommended by EPA but not mandatory, and we do not intend to preclude the opportunity for a local demonstration of trading ratios on a case-by-case basis and public input into that process.

Our work here and in other recent $PM_{2.5}$ assessments clearly show that the relative efficacy of emissions reductions varies across pollutants and that a ton of direct $PM_{2.5}$ is generally more effective than a ton of precursor emissions in reducing overall $PM_{2.5}$ concentrations. For the purposes of reporting information here, we define the ''East'' to be the 37 States either completely or in part east of 100 degrees west longitude. ''West'' would include the remaining 11 western-most States in the continental United States. We found the following relationships between pollutants in developing the preferred trading ratios:

1. NO_X to SO_2; SO_2 to NO_X: Our assessment indicated potential disbenefits of reducing NO_X (*i.e.*, reducing NO_X tons in urban areas may increase overall $PM_{2.5}$ concentrations) in the eastern United States and urban areas in the western United States. Due to the possibility of these disbenefits and the high degree of variability in the observed NO_X to SO_2 ratios or SO_2 to NO_X ratios across urban areas, we are not defining preferred ratios involving trades between these precursors but will rely upon a local demonstration to determine the appropriate trading ratios.

2. NO_X to Primary $PM_{2.5}$; Primary $PM_{2.5}$ to NO_X: Based on a local demonstration that NO_X reductions are beneficial in reducing $PM_{2.5}$ concentrations (*i.e.*, no disbenefits from NO_X reductions as noted previously), our assessment indicates that the preferred trading ratio is 200 to 1 (NO_X tons for $PM_{2.5}$ tons) or 1 to 200 ($PM_{2.5}$ tons for NO_X tons) for areas in the eastern United States, and 100 to 1 (NO_X tons for $PM_{2.5}$ tons) or 1 to 100 ($PM_{2.5}$ tons for NO_X tons) for areas in the western United States.

3. SO_2 to Primary $PM_{2.5}$; Primary $PM_{2.5}$ to SO_2: We have determined a nationwide preferred ratio of 40 to 1 (SO_2 tons for $PM_{2.5}$ tons) or 1 to 40 ($PM_{2.5}$ tons for SO_2) for trades between these pollutants. We recognize there is spatial variability here between urban and regionally located sources of these pollutants that can be addressed through a local demonstration to determine an area-specific relationship, as appropriate.

We recommend that States use these hierarchies and trading ratios in their interpollutant trading programs to provide consistency and streamline the trading process. As indicated by our work and findings, it is appropriate to establish acceptable trading ratios for interpollutant trading for $PM_{2.5}$ NSR offsets. If States elect to use EPA's recommended trading ratios, they may rely on EPA's technical work and a presumption that such ratios will be approvable by EPA absent a credible showing that EPA's trading ratios are not appropriate for that location. If States choose to develop their own hierarchies/trading ratios, they will have to substantiate by modeling and/or other technical demonstrations of the net air quality benefit for $PM_{2.5}$ ambient concentrations, and such a trading program will have to be approved by EPA.

We acknowledge that the relationship between pollutants can vary across geographic areas. Thus, local demonstrations, to determine trading ratios, will need to address a number of local factors including, but not limited to, the following:

1. The relative magnitude of emissions of direct $PM_{2.5}$ and precursor gases (*e.g.*, SO_2 and NO_X) within the geographic area of interest.
2. The relative contribution to local $PM_{2.5}$ nonattainment of directly emitted $PM_{2.5}$ and individual precursors from the various sources or source categories under consideration as part of a potential interpollutant trade.
3. The meteorological conditions and topography of the area, which result in different source-receptor relationships across pollutants within the local area.

We have adopted this approach to capture the flexibility advantages of interpollutant trading, while remaining mindful of the limitations of existing air quality models. We believe that the regional-scale models used for area-wide attainment demonstrations have sufficient accuracy to establish an overall equivalence ratio for a nonattainment area. However, we do not believe that available models can accurately determine the effects of interpollutant trades at a single source. In addition, permit-by-permit modeling demonstrations are extremely resource intensive, only to yield limited results. For these reasons, the final rules only allow a State to develop its own interpollutant trading rule for inclusion in its SIP, based on a technical demonstration for a specific nonattainment area. We will not accept case-by-case demonstrations on an individual source permit basis.

The flexibility provided by this policy allows sources to select the most cost-effective manner to obtain the offsets necessary to ensure that $PM_{2.5}$ air quality improves. This will be particularly beneficial where offsets for one particular pollutant are scarce in a particular area, as is often the case for direct $PM_{2.5}$ emissions and SO_2.

[14] A full description of this approach is available in the technical support document at *http://www.epa.gov/scram001/reports/pmnaaqs_tsd_rsm_all_021606.pdf* and in the docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2003–0062.

[15] Available in the docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2003–0062.

We received a large number of comments on this issue representing a wide variety of viewpoints. Several commenters supported flexible interpollutant trading at ratios established either on an area-wide basis or permit by permit. They often pointed out the economic and administrative benefits of flexibility in the program, especially in areas where offsets for some pollutants will be difficult to obtain. One commenter asserted that such flexibility is essential to the ability of enterprises to be able to expand as the $PM_{2.5}$ NAAQS is implemented, especially in the program's early years. Another commenter suggested allowing such trading on an equal basis, without the ''unnecessary complication'' of interpollutant offset ratios.

Many commenters argued against allowing interpollutant trading for offsets. These commenters commonly pointed out that direct $PM_{2.5}$ emissions typically have a more local impact, while the impact of precursor emissions are farther afield. A number of commenters pointed out the complex atmospheric chemistry of secondary particulate formation and the shortcomings of the air quality models currently available to perform a detailed $PM_{2.5}$ formation assessment, specifically that local-scale models are not sufficiently accurate and regional-scale models do not have the resolution to show local impacts adequately. According to two commenters, trading precursors for direct $PM_{2.5}$ emissions raises serious environmental justice concerns due to the localized impacts of direct $PM_{2.5}$ emissions. These commenters also asserted that the equivalence between precursors would vary spatially and temporally, making it extremely difficult to assess, and that $PM_{2.5}$ precursors also differ in their impacts on other air pollution problems, such as direct health and welfare impacts of SO_2 and NO_X; and formation of ozone, acid deposition, and reactive nitrogen deposition.

We also received comments opposing allowing interpollutant trading for netting purposes, on the basis that the resulting program would be very staff-intensive apart from the difficulty of demonstrating through modeling the net air quality benefit of a single source trade. We concur with these commenters and are not allowing interpollutant trading for netting purposes at this time.

A number of commenters supported some types of trades, but not others. Most frequently, these commenters favored allowing reductions in direct $PM_{2.5}$ emissions to offset precursor emissions increases. One commenter suggested a hierarchy as follows: Direct $PM_{2.5}$ emissions, SO_2, NO_X, ammonia, and VOC. That is, a pollutant should be allowed as an offset for a pollutant ranked lower, but not the reverse (*e.g.*, reductions in direct $PM_{2.5}$ emissions could be used to offset increases in any of the listed pollutants, SO_2 emissions reductions could offset NO_X increases, etc.).

As previously noted, this rule allows interpollutant and interprecursor trading of offsets according to a SIP-approved trading program. To be approved, the trading program must either adopt EPA's recommended trading ratios or be backed up by regional-scale modeling that demonstrates a net air quality benefit using appropriate overall offset ratios for such trades for a specified nonattainment area, State, or multi-State region. There is considerable uncertainty about the relationship of precursor and direct $PM_{2.5}$ emissions to localized ambient $PM_{2.5}$ concentration both spatially and temporally. Given the uncertainty as to localized adverse and beneficial effects, we have opted for program flexibility. We believe this is necessary, in part, because of the shortage of available offsets for some pollutants, particularly direct $PM_{2.5}$ emissions and SO_2, in many areas.

H. How will the transition to the $PM_{2.5}$ PSD requirements occur?

1. Background

On October 23, 1997, after the NAAQS for $PM_{2.5}$ was originally promulgated, we issued a guidance document entitled ''Interim Implementation for the New Source Review Requirements for $PM_{2.5}$,'' John S. Seitz, EPA. As noted in that guidance, section 165 of the Act suggests that PSD requirements become effective for a new NAAQS upon the effective date of the NAAQS. Section 165(a)(1) of the Act provides that no new or modified major source may be constructed without a PSD permit that meets all of the section 165(a) requirements with respect to the regulated pollutant. Moreover, section 165(a)(3) provides that the emissions from any such source may not cause or contribute to a violation of any NAAQS. Also, section 165(a)(4) requires BACT for each pollutant subject to PSD regulation.

The 1997 guidance stated that sources should continue to use implementation of a PM_{10} program as a surrogate for meeting $PM_{2.5}$ NSR requirements until certain difficulties were resolved, primarily the lack of necessary tools to calculate the emissions of $PM_{2.5}$ and related precursors, the lack of adequate modeling techniques to project ambient impacts, and the lack of $PM_{2.5}$ monitoring sites. With this final action and technical developments in the interim, these difficulties have largely been resolved.

2. Transition for ''Delegated States''

The Federal PSD program is contained in 40 CFR 52.21. This section is the Federal implementation plan for areas lacking an approved PSD program. We implement this program in Indian country and some U.S. territories, but for the most part we have delegated implementation of 40 CFR 52.21 to those States without approved PSD programs (typically referred to as ''delegated States''). Except as provided in the grandfathering provisions that follow, these final rules go into effect and must be implemented beginning on the effective date of this rule, July 15, 2008 in all areas subject to 40 CFR 52.21, including the delegated States.

Consistent with 40 CFR 52.21(i)(1)(x), wherein EPA grandfathered sources or modifications with pending permit applications based on PM from the PM_{10} requirements established in 1987, EPA will allow sources or modifications who previously submitted applications in accordance with the PM_{10} surrogate policy to remain subject to that policy for purposes of permitting if EPA or its delegate reviewing authority subsequently determines the application was complete as submitted. This is contingent upon the completed permit application being consistent with the requirements pursuant to the EPA memorandum entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$'' (Oct. 23, 1997) recommending the use of PM_{10} as a surrogate for $PM_{2.5}$. Accordingly, we have added 40 CFR 52.21(i)(1)(xi) to reflect this grandfathering provision.

3. Transition for ''SIP-Approved States''

The requirements for State PSD programs are contained in 40 CFR 51.166. Most States have developed PSD programs according to these requirements, which we have approved into each State's implementation plan. States with PSD programs approved under 40 CFR 51.166 are called ''SIP-approved States.''

States with SIP-approved PSD programs that require amendments to incorporate these final NSR rule changes for $PM_{2.5}$ will need time to accomplish these SIP amendments. For example, a State may need to amend its existing regulations to add the specific significant emissions rate for $PM_{2.5}$ or a designated precursor. In our December 31, 2002 **Federal Register** notice

promulgating other changes to the NSR program, we explained that the Act does not specifically address the timeframe by which States must submit SIP revisions when we revise the PSD and NA NSR rules. We nonetheless looked to section 110(a)(1) to guide our decision to require States to adopt and submit plan revisions within 3 years from when we publish changes in the **Federal Register**. We codified this approach in the PSD regulations at 40 CFR 51.166(a)(6)(i) and applied this same timeframe to State NA NSR programs through that final rule action. 64 FR 80241. This rule follows our established approach for determining when States must adopt and submit revised SIPs following changes to the NSR regulations, but does not revise otherwise applicable SIP submittal deadlines. Accordingly, we are requiring States with SIP-approved PSD programs to submit revised PSD programs and revised NA NSR programs for $PM_{2.5}$ (*see* section V.I.) within 3 years from the date of this action.[16]

During this SIP development period, the $PM_{2.5}$ NAAQS must still be protected under the PSD program in such States. We are finalizing our proposed option 1 that if a SIP-approved State is unable to implement a PSD program for the $PM_{2.5}$ NAAQS based on these final rules, the State may continue to implement a PM_{10} program as a surrogate to meet the PSD program requirements for $PM_{2.5}$ pursuant to the 1997 guidance mentioned previously. Under option 1 for SIP-approved States, we had proposed two additional requirements. These were to require sources to demonstrate that emissions from construction or operation of the facility will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS and to include condensable PM emissions in determining major NSR applicability and control requirements. We are not finalizing either of these additional requirements of our proposed option 1. We have dropped the requirement for demonstrating compliance with the $PM_{2.5}$ NAAQS in order to maintain consistency in the application of the existing surrogate policy across the PSD program during the interim period. Since in the final rule we are otherwise allowing SIP-approved States to continue with the existing PM_{10} surrogate policy to meet the PSD requirements for $PM_{2.5}$, partially implementing the PM_{10} surrogate policy in this manner would be confusing and difficult to administer. Thus, to ensure consistent administration during the transition period, we have elected to maintain our existing PM_{10} surrogate policy which only recommends as an interim measure that sources and reviewing authorities conduct the modeling necessary to show that PM_{10} emissions will not cause a violation of the PM_{10} NAAQS as a surrogate for demonstrating compliance with the $PM_{2.5}$ NAAQS. Also as discussed previously in section V.E, we are not requiring condensable emissions to be fully integrated into the $PM_{2.5}$ program until the end of the transition period to validate test methods discussed in section V.E of this preamble.

In our proposal, we offered two additional options for the SIP development period in States with SIP-approved PSD programs. Under option 2, we would have updated the 1997 guidance to reflect the provisions in these final rules and allowed States to run a $PM_{2.5}$ program pursuant to this updated guidance. Alternatively under option 2, we would have amended appendix S and 40 CFR 52.24 so that the PSD requirements of 40 CFR 52.21 would govern the issuance of major NSR permits during the SIP development period. Finally, under option 3, we would have allowed a State to request delegation of just the Federal $PM_{2.5}$ PSD program in 40 CFR 52.21 in that State. A State that otherwise had a SIP-approved PSD program could have requested delegation for $PM_{2.5}$ by informing us that it did not intend to submit a PSD SIP for $PM_{2.5}$ in the immediate future.

We received several comments supporting option 1, although some of these commenters requested that we not require condensable emissions to be included until the concerns with test methods were resolved. One of these commenters favored continuing to implement the PM_{10} program as a surrogate under the 1997 guidance to provide clarity and certainty to the permitting agency and regulated community. The commenter indicated that $PM_{2.5}$ inventories and methods for estimating emission rates are rudimentary and may even be nonexistent in some cases, which would make permitting onerous.

A few commenters opposed option 1. One of these commenters indicated that we should not continue outdated policy (*i.e.*, the 1997 NSR guidance) because it does not address the $PM_{2.5}$ problem, cannot be implemented in some States, and does not incorporate precursor emissions.

Four commenters expressed support for option 2. Three of these suggested that we issue updated guidance to incorporate these PSD requirements for $PM_{2.5}$, while one preferred that we revise appendix S to point to the requirements of 40 CFR 52.21. We received one comment in favor of option 3 and three opposed.

Two commenters supported approaches different from our options. One of these commenters requested that the interim framework should, at a minimum, ensure that any new or modified project that exceeds thresholds use BACT. The commenter also suggested that we require offsets for projects approved before the other protective elements of the full PSD program are in place to ensure that there is no significant deterioration in air quality. Another commenter stated that none of the proposed options were viable for their State. The commenter requested that we allow States to continue their existing PM_{10} program as a surrogate for $PM_{2.5}$, without caveat.

As noted previously, we are finalizing proposed option 1, without the requirement of demonstrating compliance with the $PM_{2.5}$ NAAQS or the requirement to include condensable emissions. We believe that our final rule is reasonable for the following reasons. First, PM_{10} will act as an adequate surrogate for $PM_{2.5}$ in most respects, because all new major sources and major modifications that would trigger PSD requirements for $PM_{2.5}$ would also trigger PM_{10} requirements because $PM_{2.5}$ is a subset of PM_{10}. Second, both of the precursors designated in the final rule—SO_2 and NO_X (presumptively)—are already regulated under State NSR programs for other criteria pollutants. Thus, those precursors will be subject to NSR through those other programs. We do not believe that the other options or suggestions offer significant advantages that outweigh the utility and ease of implementation of this approach.

States may include grandfathering provisions similar to the ones EPA

[16] In our proposal, we proposed April 5, 2008 as a deadline for States to comply with the revised nonattainment NSR and PSD requirements in this rule. However, in light of the time it has taken to complete this final rule, expecting States to submit required SIP revisions consistent with this final rule by April 5, 2008 is no longer practical or fair. Nevertheless, States are still currently required to implement a PSD program for $PM_{2.5}$, and we still expect States to fulfill the SIP infrastructure requirements of CAA section 110(a)(2), including the PSD program requirements, by April 5, 2008. We believe these PSD program requirements are currently met by implementing the transitional PSD program for $PM_{2.5}$ described in this preamble (a.k.a. the PM_{10} surrogate policy). In accordance with a Consent Decree in *Environmental Defense and American Lung Ass'n* v. *Johnson*, No. 1:05CV00493 (D.D.C. June 15, 2005), EPA must determine by October 5, 2008 whether each State has submitted the SIP revisions for the $PM_{2.5}$ PSD program required under section 110(a)(2) of the Act. This rulemaking does not change the specific guidance we previously provided to States on what they should submit by April 5, 2008 to comply with section 110(a)(2).

included in the transition requirements for 40 CFR 52.21.

I. How will the transition to the $PM_{2.5}$ NA NSR requirements occur?

1. Background

The requirements for State NA NSR programs are contained in 40 CFR 51.165. All States with nonattainment areas have developed NA NSR programs according to these requirements, which we have approved into each State's implementation plan. However, as noted previously, it takes time for a State to amend its SIP when it must make changes to its NA NSR program. According to the provisions of 40 CFR 52.24(k), during such an interim period when a State lacks an approved NA NSR program for a particular pollutant, appendix S of 40 CFR part 51 applies for NA NSR permitting.

Section 172(c)(5) of the Act requires that States issue major NSR permits for construction and major modifications of major stationary sources in any nonattainment area. Thus, since the $PM_{2.5}$ nonattainment designations became effective on April 5, 2005, States are now required to issue major NSR permits that address the section 173 NA NSR requirements for $PM_{2.5}$.

On the date that the $PM_{2.5}$ nonattainment designations took effect (April 5, 2005), we issued guidance to address implementation of the NA NSR program pending the completion of this action to develop implementation rules for $PM_{2.5}$. *See* memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards to Regional Air Directors, ''Implementation of New Source Review Requirements in $PM_{2.5}$ Nonattainment Areas'' (April 5, 2005).

Our current guidance permits States to implement a PM_{10} NA NSR program as a surrogate to address the requirements of NA NSR for the $PM_{2.5}$ NAAQS. A State's surrogate major NSR program in $PM_{2.5}$ nonattainment areas may consist of either the implementation of the State's SIP-approved NA NSR program for PM_{10} or implementation of a major NSR program for PM_{10} under the authority in 40 CFR part 51, appendix S.

2. Transition

With this finalization of the new $PM_{2.5}$ NSR implementation requirements under 40 CFR 51.165, States now have the necessary tools to implement a NA NSR program for $PM_{2.5}$. After the effective date of the amended rule (that is, July 15, 2008, States will no longer be permitted to implement a NA NSR program for PM_{10} as a surrogate for the $PM_{2.5}$ NA NSR requirements. Most States will then need to implement a transitional $PM_{2.5}$ NA NSR program under appendix S (as amended in this rulemaking action) until EPA approves changes to a State's SIP-approved NA NSR program to reflect the new requirements under 40 CFR 51.165. At this time, we do not believe it is appropriate to allow grandfathering of pending permits being reviewed under the PM_{10} surrogate program in nonattainment areas, mainly because of a State's obligations to expedite attainment and the fact that we had not established a similar precedent for transitioning from PM to PM_{10}.

The NA NSR provisions in a State's existing SIP-approved NA NSR program would also apply in areas designated as nonattainment for the $PM_{2.5}$ NAAQS if the SIP-approved regulations contain a generic requirement to issue part D permits in areas designated as nonattainment for any criteria pollutant and do not otherwise need to be amended to incorporate the changes finalized in this action. States belonging to the following categories will need to revise their NA NSR regulations and submit them to EPA for incorporation into the SIP within 3 years from the date of this action [17]:

- States that have nonattainment regulations which need to be amended to incorporate the new $PM_{2.5}$ requirements.
- States that have designated nonattainment areas for $PM_{2.5}$ and their nonattainment NSR regulations specifically list the areas in which NA NSR applies (*i.e.*, the list does not include the designated nonattainment areas for $PM_{2.5}$).
- States that have not previously had nonattainment areas but now have nonattainment areas for $PM_{2.5}$.

These States will have to implement a transitional NA NSR permitting program for $PM_{2.5}$ pursuant to 40 CFR 52.24(k) and appendix S until their existing part D SIPs are revised to meet these new $PM_{2.5}$ NSR requirements under 40 CFR 51.165.

3. Implementation of NSR Under the ''Emissions Offset Interpretative Ruling'' (40 CFR Part 51, Appendix S) With Revisions

In general, appendix S requires new or modified major sources to meet LAER and obtain sufficient offsetting emissions reductions to assure that a new major source or major modification of an existing major source will not interfere with the area's progress toward attainment. Readers should refer to appendix S for a complete understanding of these and other appendix S requirements. In this action, we are finalizing our proposed revisions to appendix S to include provisions necessary to implement a transitional NA NSR program for $PM_{2.5}$, including significant emissions rates applicable to major modifications for $PM_{2.5}$ and, as appropriate, precursors. Additionally, since we are finalizing interpollutant trading provisions in the NSR rules at 40 CFR 51.165, we are also amending appendix S to allow interpollutant trading for $PM_{2.5}$. Appendix S applies directly to new and modified major stationary sources. In accordance with the requirements of section 110(a)(2)(c) of the Act, we believe that the majority of States have the legal authority to issue permits consistent with these requirements under an existing SIP-approved permitting program. Nonetheless, at least one State has reported that it lacks the legal authority to issue permits implementing the requirements of appendix S under its existing permitting rules.

If a State is unable to apply the requirements of appendix S, we will act as the reviewing authority for the relevant portion of the permit. We believe that it is appropriate for EPA to issue the preconstruction permits in such circumstances. Congress amended the Act in 1990 to remove the requirements that would have applied a construction ban in areas that lacked a SIP-approved part D permit program. Thus, we believe that it is consistent with Congressional intent that either the State or EPA issues construction permits for those projects meeting the applicable criteria during the interim period. *See* the preamble of the proposal for this rule for more detail on the legal basis for requiring States to issue NA NSR permits pursuant to appendix S during the SIP development period (70 FR 66045–46).

We received three comments supporting the issuance of NA NSR permits under appendix S during the SIP development period. Two of these

[17] As discussed earlier, we are following the precedent we established in our 2002 rule for NA NSR program revisions to allow States adequate time to adopt these revisions. For practical and fairness reasons, we are not requiring the NA NSR elements of this rule to be submitted by April 5, 2008, as we had proposed. However, the States are still required to submit nonattainment plans for $PM_{2.5}$ (including NA NSR programs) on April 5, 2008. We believe this requirement is satisfied by implementing the transitional NA NSR program for $PM_{2.5}$ (a.k.a. the PM_{10} surrogate policy) described in our April 5, 2005 guidance, or, if submitted after the effective date of this rule, implementing Appendix S as revised in this rule. This rulemaking does not change the specific guidance we previously provided to States on what they should submit to EPA by April 5, 2008 to comply with nonattainment area requirements under Part D.

commenters expected States generally to be able to do so, while one suggested that EPA issue such permits because States will lack the authority to do so without protracted rule revisions. One of these commenters also suggested that we revise appendix S to authorize interprecursor trading during the transition period, believing that the paucity of existing direct $PM_{2.5}$ emissions and SO_2 offsets likely will make business expansion in $PM_{2.5}$ nonattainment areas from now until at least April 2008 impossible unless this is done. One commenter suggested that we suspend the 2005 $PM_{2.5}$ NSR guidance which allows use of PM_{10} emissions as a surrogate for $PM_{2.5}$ emissions in $PM_{2.5}$ nonattainment areas when we adopt the final $PM_{2.5}$ implementation rules, while three other commenters requested continued implementation of that guidance during the interim period.

As noted previously, this final action will require States to amend their NA NSR programs consistent with the amended rules at 40 CFR 51.165. During the SIP development period, where they have legal authority to do so, States must issue NA NSR permits under appendix S (as revised for purposes of the $PM_{2.5}$ program). To address one of the points raised by commenters, we are amending appendix S to allow interpollutant trading for $PM_{2.5}$ in this final rule. Where a State determines that it does not have legal authority to issue such permits, we will act as the reviewing authority. As of the effective date of this action, the 2005 $PM_{2.5}$ NSR guidance on use of PM_{10} emissions as a surrogate for $PM_{2.5}$ emissions will remain in effect only for PSD in the SIP-approved States during the SIP development period. In the delegated PSD States and in nonattainment areas, the new $PM_{2.5}$ requirements will apply immediately on the effective date of this final action.

J. Does major NSR apply to $PM_{2.5}$ precursors during the SIP development period?

As discussed previously in section V.A, we have taken final action on NSR applicability for $PM_{2.5}$ precursors. Specifically, we have designated SO_2 as a national precursor to $PM_{2.5}$ in all areas, NO_X as a ''presumed-in'' precursor in all areas, VOC as a ''presumed-out'' precursor in all areas, and ammonia as a ''presumed-out'' precursor. Thus, States have the option of excluding NO_X as a precursor by demonstrating that NO_X emissions are not a significant contributor to ambient $PM_{2.5}$ concentrations in a particular area. In addition, States have the option of identifying VOC and/or ammonia as precursor(s) by demonstrating that emissions of VOC and/or ammonia are a significant contributor in an area, and thus should be subject to major NSR.

In the proposal, during the SIP development period, we proposed that SO_2 should be treated as a regulated $PM_{2.5}$ precursor as of the effective date of this final rule since there is no doubt about its status as such in any area and proposed to defer NSR applicability for NO_X until a State SIP submittal so that if a State elected to submit information to rebut the presumption that NO_X is a regulated $PM_{2.5}$ precursor, the State would have an opportunity to do so in its SIP submittal. We also proposed that VOCs and ammonia would not be treated as $PM_{2.5}$ precursors during the interim period because they are presumed not to be precursors until they have been demonstrated to be through a State's SIP submittal.

A few commenters supported staying the applicability of NSR to all precursors during the interim period. However, two of these supporters suggested that EPA establish mechanisms for interpollutant trading for offsets during the interim period so that increases in direct $PM_{2.5}$ emissions can be offset with SO_2 or NO_X emissions reductions. Another supporter noted that their State cannot impose obligations on NSR applicants until those obligations are established in State regulations or statutes. Another indicated that this delay would allow States the time to develop experience and knowledge in establishing local photochemical models and to performance test their accuracy.

Two commenters opposed staying NSR applicability for any precursors. They believe that this would make attainment more difficult. One commenter suggested that SO_2 should be designated as a precursor during the interim period, and another suggested the same for SO_2 and NO_X.

Based on the comments, we have been persuaded that SIP-approved PSD States will not have the authority to regulate $PM_{2.5}$ precursors before they have amended their SIPs to incorporate these requirements in attainment areas. Thus, in order to allow time for these States to revise their regulations to incorporate such requirements, this final action does not require regulation of SO_2 or NO_X as precursors to $PM_{2.5}$ under PSD until the SIP development period ends. In addition, we are allowing SIP-approved PSD States to continue with the existing PM_{10} surrogate policy to meet the PSD requirements for $PM_{2.5}$. However, for delegated PSD States, SO_2 and NO_X are regulated as precursors from the effective date of this rule. However, these States or EPA have the option of excluding NO_X as a precursor by demonstrating that NO_X emissions are not a significant contributor to ambient $PM_{2.5}$ concentrations in a particular area.

For nonattainment areas, the transitional program pursuant to appendix S will apply on the effective date of this action. Under appendix S, SO_2 will be regulated as a precursor in all nonattainment areas for $PM_{2.5}$. However, unlike in the proposal, NO_X will not be regulated as a precursor for $PM_{2.5}$ because we believe it is appropriate to give States the opportunity to determine whether NO_X emissions are a significant contributor to the ambient $PM_{2.5}$ problem, and to make the appropriate demonstration in their SIP. Finally, for States determining that VOC and/or ammonia are $PM_{2.5}$ precursors under their SIPs, we will approve their definition of ''significant emissions rate'' for each precursor based on an appropriate demonstration.

K. Are there any Tribal concerns?

Some Tribal areas may be designated as nonattainment, in part because of pollution that is transported from surrounding State lands. Tribal representatives have advocated for additional flexibility to address nonattainment problems caused by transported pollution, such as a pool of available NSR offset set-asides (which we expect would come from State offset pools or banks), because they have limited ability to generate offsets on their own. Tribal representatives have raised these and other concerns in discussions on implementation of the 8-hour ozone and $PM_{2.5}$ standards, and in comments on the 8-hour ozone implementation rule. We requested comment on whether emissions offset set-asides, possibly generated by innovative measures to promote additional emissions reductions, are an appropriate method to help level the playing field for the Tribes and support economic development in Tribal areas. We also requested comment on ways in which States may help provide the Tribes access to offsets from non-Tribal areas. We received no comments on these issues.

We recently proposed Tribal NSR rules. *See* 71 FR 48696, August 21, 2006. They include a NA NSR rule, which refers to appendix S for its substantive requirements, and a minor NSR rule. In recognition of the concerns mentioned above, we have proposed and sought comments on options for obtaining offset relief in that proposal.

We will address these issues in the context of that rule.

L. What are the requirements for minor NSR for $PM_{2.5}$?

Pursuant to section 110(a)(2)(C) of the Act, States must have a minor source permitting program. This applies to new and modified stationary sources that are not considered major for a criteria pollutant or a precursor for a criteria pollutant. Prior to this action, States were required to include the following pollutants in their minor NSR program:

- VOC,
- SO_2,
- NO_X,
- CO,
- PM_{10}, and
- Lead (Pb).

Based on this action, States must now amend their minor source programs to include direct $PM_{2.5}$ emissions and precursor emissions in the same manner as included for purposes of $PM_{2.5}$ major NSR.

M. Rural Transport Areas

In the proposal for the Clean Air Fine Particle Implementation Rule and this NSR implementation rule for $PM_{2.5}$, we considered the option of classifying some nonattainment areas as transport areas that suffer from overwhelming transport, and of developing NA NSR rules specific to such areas. However, the final implementation rule does not include the rural transport classification. Consequently, no NA NSR rules have been developed or finalized in this rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA has been assigned OMB Control Number 2060–0003 (EPA ICR No. 1230.21).

To achieve the purposes of the major NSR program, certain records and reports are necessary for the State or local agency (or the EPA Administrator in non-delegated States), for example, to: (1) Confirm the compliance of status of stationary sources, identify any stationary sources not subject to the rules, and identify stationary sources subject to the rules; and (2) ensure that the stationary source control requirements are being achieved. The information would be used by EPA or State enforcement personnel to (1) identify stationary sources subject to the rules, (2) ensure that appropriate control technology is being properly applied, and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis.

This final NSR rule does not create new information collection requirements, but rather expands the coverage of the existing requirements of the major NSR program. Specifically, the rule changes finalized in this action add $PM_{2.5}$ to the list of air pollutants that must be addressed in the major NSR program, and the companion proposal adds certain elements that are necessary for a complete $PM_{2.5}$ NSR program. This change is unlikely to increase significantly the number of NSR permits that must be issued, but may add to the analyses that sources and Federal, State, and local reviewing authorities must conduct as part of the construction permit application and review process.

We expect the rule changes finalized in this action to increase the burden associated with major NSR permitting for tracking new emissions of $PM_{2.5}$ against increments; collecting ambient air quality monitoring data for existing $PM_{2.5}$ concentrations; reviewing the effects of $PM_{2.5}$ emissions on soils and vegetation, as well as on air quality related values in Class I areas; determining the appropriate best available control technology or lowest achievable emission rate; and/or obtaining offsets. At the same time, there would be a reduction in burden directly associated with the revocation of the annual increment for PM_{10}, which is proposed in the proposed rule.

Over the 3-year period covered by the ICR, we estimate an average annual burden increase of about 39,000 hours (about 8 percent) and $4.3 million (about 10 percent) for all industry entities that would be affected by this final NSR rule. For the same reasons, we also expect the final rule to increase burden for the State and local authorities reviewing permit applications when fully implemented. In addition, there would be additional burden for State and local agencies to revise their SIPs to incorporate the proposed changes. We estimate the combined increase in burden to average about 16,000 hours and $700,000 annually for all State and local reviewing authorities, which is less than 13 percent.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this proposed rule on small entities, ''small entity'' is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government or a city, county, town,

school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. The requirements of this final rule apply only to new major stationary sources or major modifications of existing major stationary sources. This final rule does not create any new requirements under the major NSR program, but simply expands the program to cover an additional pollutant, referred to as $PM_{2.5}$. There is no reason to expect that the rule will significantly or uniquely affect small businesses, organizations, or governments (few, if any, of which act as reviewing authorities pursuant to this final rule).

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The final rule does not add any new requirements to the NSR program; it simply expands the program to cover $PM_{2.5}$ in addition to the several other pollutants already defined as regulated NSR pollutants. (Technically, the rule also subjects the precursors to $PM_{2.5}$ to the NSR program. However, these precursors (SO_2, NO_X, and VOC) are already subject to the existing NSR program.) As discussed previously in section VI.B on the *Paperwork Reduction Act*, the expansion of the NSR program to cover $PM_{2.5}$ will only marginally increase the expenditures of State, local, and tribal governments and the private sector on the program. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As noted previously, this rule does not create any new requirements under the major NSR program, but simply expands the program to cover an additional pollutant ($PM_{2.5}$). There is no reason to expect that the rule will significantly or uniquely affect small governments, few if any of which act as reviewing authorities.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Pursuant to the terms of Executive Order 13132, it has been determined that this proposed rule does not have ''federalism implications'' because it does not meet the necessary criteria. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

In the spirit of Executive Order 13132, however, and consistent with our policy to promote communications between us and State and local governments, we specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This final rule does not have ''Tribal implications'' as defined in Executive Order 13175. This rule concerns the NSR requirements for State and tribal implementation plans. The CAA provides for States to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Air Rule (TAR) under the CAA gives Tribes the opportunity to develop and implement CAA programs such as programs to attain and maintain the $PM_{2.5}$ NAAQS, but it leaves to the discretion of the Tribe the decision of whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

Although Executive Order 13175 does not apply to this rule, EPA did reach out to Tribal leaders and environmental staff in developing this rule. From 2001–2004, the EPA supported a National Designations Workgroup to provide a forum for tribal professionals to give input to the designations process. In 2006, EPA supported a national ''Tribal Air call'' which provides an open forum for all Tribes to voice concerns to EPA about the NAAQS implementation process, including the $PM_{2.5}$ NAAQS. In these meetings, EPA briefed call participants and Tribal environmental professionals gave input as the rule was under development. Furthermore, in December 2005, EPA sent individualized letters to all federally recognized Tribes about the proposal to give Tribal leaders the opportunity for consultation.

This final rule does not have Tribal implications as defined by Executive

Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the $PM_{2.5}$ NAAQS at this time. The EPA notes that even if a Tribe were implementing such a plan at this time, while the rule might have Tribal implications with respect to that Tribe, it would not impose substantial direct costs upon it, nor would it preempt Tribal law.

Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. As this rule does not have Tribal implications, Executive Order 13175 does not apply.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks

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

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule does not impose any new requirements under the NSR program. However, in expanding the major NSR program to address $PM_{2.5}$, we believe that this rule will serve to reduce environmental health risks to all citizens, including children, because one of the basic requirements of the major NSR program is that new and modified major stationary sources must not cause or contribute to air quality in violation of the NAAQS.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The final rule does not add any new requirements to the major NSR program; it simply expands the program to cover $PM_{2.5}$ in addition to the several other pollutants already defined as regulated NSR pollutants. Although the major NSR program may apply to energy supply and distribution companies that build or significantly modify major sources of regulated NSR pollutants, we believe that any increase in expenditures for obtaining NSR permits that may result from this rule will be marginal rather than significant.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards (VCS) in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to OMB, with explanations when we do not use available and applicable VCS.

This final rule does not involve technical standards. Therefore, we did not consider the use of any VCS.

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

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

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will have the effect of improving air quality. While it does not impose any new requirements under the major NSR program, we believe that this rule, in expanding the NSR program to address $PM_{2.5}$, will serve to reduce adverse human health and environmental effects for all citizens, including minorities and low-income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The rules affected by this action will be effective July 15, 2008.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by July 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* Act section 307(b)(2).

M. Determination Under Section 307(d)

The PSD portions of this rulemaking, which implements part C of title I of the Act, are subject to the procedural requirements in section 307(d) of the Act. *See* section 307(d)(1)(J). In addition, pursuant to section 307(d)(1)(V) of the Act, the Administrator determines that the NA

NSR portions of this action should also be subject to the provisions of section 307(d) to ensure consistency. All of the procedural requirements of section 307(d), *e.g.*, docketing, hearing, and comment periods, have been complied with during the course of this rulemaking.

VII. Statutory Authority

The statutory authority for this action is provided by sections 101, 110, 165, 169, 172, 173, 301, and 302 of the Act as amended (42 U.S.C. 7401, 7410, 7475, 7479, 7502, 7503, 7601, and 7602). This rulemaking is also subject to section 307(d) of the Act (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

Dated: May 8, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows.

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

■ 2. Section 51.165 is amended as follows:

■ a. By revising paragraph (a)(1)(x)(A);

■ b. By removing the word ''or'' at the end of paragraph (a)(1)(xxxvii)(B);

■ c. By revising paragraph (a)(1)(xxxvii)(C);

■ d. By adding paragraph (a)(1)(xxxvii)(D);

■ e. By redesignating paragraphs (a)(9)(i) through (iii) as paragraphs (a)(9)(ii) through (iv), respectively, and adding new paragraph (a)(9)(i);

■ f. By removing from newly redesignated paragraph (a)(9)(iii) the reference to ''paragraph (a)(9)(i)'' and adding in its place ''paragraph (a)(9)(ii)''; and

■ g. By adding paragraph (a)(11).

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(x)(A) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
PM_{10}: 15 tpy
$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under paragraph (a)(1)(xxxvii) of this section

* * * * *

(xxxvii) * * *

(C) Any pollutant that is identified under this paragraph (a)(1)(xxxvii)(C) as a constituent or precursor of a general pollutant listed under paragraph (a)(1)(xxxvii)(A) or (B) of this section, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*1*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(*2*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

(*3*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*4*) Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations; or

(D) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in nonattainment major NSR permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

* * * * *

(9)(i) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in paragraphs (a)(9)(ii) through (a)(9)(iv) of this section.

* * * * *

(11) The plan shall require that in meeting the emissions offset requirements of paragraph (a)(3) of this section, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. The plan may allow the offset requirements in paragraph (a)(3) of this section for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ to be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under paragraph (a)(1)(xxxvii)(C) of this section if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

* * * * *

■ 3. Section 51.166 is amended as follows:

■ a. By revising paragraphs (b)(23)(i) and (b)(49)(i);

■ b. By removing the word ''or'' at the end of paragraph (b)(49)(iii);

■ c. By adding and reserving paragraph (b)(49)(v);

■ d. By adding paragraph (b)(49)(vi); and

■ e. By revising paragraphs (i)(5)(ii) and (i)(5)(iii).

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(23)(i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy of particulate matter emissions. 15 tpy of PM_{10} emissions
$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under paragraph (b)(49) of this section
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): $3.2 \times 10-^{-6}$ megagrams per year (3.5×10^{-6} tons per year)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

* * * * *

(49) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph (b)(49)(i) as a constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*a*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*b*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*c*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*d*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

* * * * *

(v) [Reserved.]

(vi) Particulate matter (PM) emissions, $PM_{2.5}$ emissions, and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for PM, $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

* * * * *

(i) * * *

(5) * * *

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i) of this section; or

(iii) The pollutant is not listed in paragraph (i)(5)(i) of this section.

* * * * *

■ 4. Appendix S to Part 51 is amended as follows:

■ a. By revising paragraphs II.A.10(i) and II.A.31;

■ b. By revising paragraph IV.A, Condition 3;

■ c. By redesignating paragraphs IV.G.1 through IV.G.3 as paragraphs IV.G.2 through IV.G.4, respectively, and adding new paragraph IV.G.1;

■ d. By removing from newly redesignated paragraph IV.G.3 the reference to ''paragraph IV.G.1'' and adding in its place ''paragraph IV.G.2''; and

■ e. By adding paragraph IV.G.5.

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

10. (i) *Significant* means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
Particulate matter: 25 tpy of particulate matter emissions
PM_{10}: 15 tpy
$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions

* * * * *

31. *Regulated NSR pollutant*, for purposes of this Ruling, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a national ambient air quality standard has been promulgated;

(iii) Any pollutant that is identified under this paragraph II.A.31(iii) as a constituent or precursor of a general pollutant listed under paragraph II.A.31(i) or (ii) of this Ruling, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*a*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(*b*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas; or

(iv) Particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in permits issued under this ruling. Compliance with emissions limitations for PM, $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be

considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

* * * * *

IV. * * *

A. * * *

Condition 3. Emission reductions (*offsets*) from existing sources [5] in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS.[6] Except as provided in paragraph IV.G.5 of this Ruling (addressing $PM_{2.5}$ and its precursors), only intrapollutant emission offsets will be acceptable (*e.g.*, hydrocarbon increases may not be offset against SO_2 reductions).

[5] Subject to the provisions of paragraph IV.C of this Ruling.

[6] The discussion in this paragraph is a proposal, but represents EPA's interim policy until final rulemaking is completed.

* * * * *

G. *Offset ratios*.

1. In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in paragraphs IV.G.2 through IV.G.4.

* * * * *

5. *Interpollutant offsetting*. In meeting the emissions offset requirements of paragraph IV.A, Condition 3 of this Ruling, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interpollutant offsetting is permitted for a particular pollutant as specified in this paragraph IV.G.5. The offset requirements of paragraph IV.A, Condition 3 of this Ruling for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ may be satisfied by offsetting reductions of direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under paragraph II.A.31 (iii) of this Ruling if such offsets comply with an interprecursor trading hierarchy and ratio approved by the Administrator.

* * * * *

PART 52—[AMENDED]

■ 5. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq*.

Subpart A—[Amended]

■ 6. Section 52.21 is amended as follows:

■ a. By revising paragraphs (b)(23)(i) and (b)(50)(i);

■ b. By removing the word ''or'' at the end of paragraph (b)(50)(iii);

■ c. By adding and reserving paragraph (b)(50)(v);

■ d. By adding paragraphs (b)(50)(vi) and (i)(1)(xi);

■ e. By revising paragraph (i)(5)(ii); and

■ f. By adding paragraph (i)(5)(iii).

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(23)(i) Significant means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy of particulate matter emissions
PM_{10}: 15 tpy
$PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under paragraph (b)(50) of this section
Ozone: 40 tpy of volatile organic compounds or nitrogen oxides
Lead: 0.6 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Hydrogen sulfide (H_2S): 10 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2×10^{6} megagrams per year (3.5×10^{6} tons per year)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
Municipal solid waste landfills emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

* * * * *

(50) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph (b)(50)(i) as a constituent or precursor for such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(*a*) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(*b*) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(*c*) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(*d*) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

* * * * *

(v) [Reserved.]

(vi) Particulate matter (PM) emissions, $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for PM, $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

* * * * *

(i) * * *

(1) * * *

(xi) The source or modification was subject to 40 CFR 52.21, with respect to $PM_{2.5}$, as in effect before July 15, 2008, and the owner or operator submitted an application for a permit under this section before that date consistent with EPA recommendations to use PM_{10} as a surrogate for $PM_{2.5}$, and the Administrator subsequently determines that the application as submitted was complete with respect to the $PM_{2.5}$ requirements then in effect, as interpreted in the EPA memorandum entitled ''Interim Implementation of New Source Review Requirements for $PM_{2.5}$'' (October 23, 1997). Instead, the requirements of paragraphs (j) through

(r) of this section, as interpreted in the aforementioned memorandum, that were in effect before July 15, 2008 shall apply to such source or modification.

* * * * *

(5) * * *

(ii) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph (i)(5)(i) of this section; or

(iii) The pollutant is not listed in paragraph (i)(5)(i) of this section.

* * * * *

[FR Doc. E8–10768 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

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

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Randolph County, Illinois, and Incorporated Areas Docket No.: FEMA–B–7740			
Kaskaskia River	At confluence with Mississippi River	+392	Village of Evansville, Unincorporated Areas of Randolph County.
	Randolph/Monroe County boundary (approximately 700 feet upstream Anna Lane extended).	+392	
Mississippi River	Jackson/Randolph County boundary (approximately Cora Road extended).	+382	City of Chester, Unincorporated Areas of Randolph County, Village of Kaskaskia, Village of Prairie Du Rocher, Village of Rockwood.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Randolph/Monroe County boundary (approximately 3,025 feet downstream of Regtown Road extended).	+402	

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

ADDRESSES

City of Chester
Maps are available for inspection at 1330 Swanwick Street, Chester, IL 62233.

Unincorporated Areas of Randolph County
Maps are available for inspection at 1 Taylor Street, Zoning Administrator, Chester, IL 62233.

Village of Evansville
Maps are available for inspection at 403 Spring Street, P.O. Box 257, Evansville, IL 62242.

Village of Kaskaskia
Maps are available for inspection at 1 Taylor Street, Chester, IL 62233.

Village of Prairie Du Rocher
Maps are available for inspection at 209 Henry Street, P.O. Box 325, Prairie Du Rocher, IL 62277.

Village of Rockwood
Maps are available for inspection at 900 Original Street, Rockwood, IL 62280.

Warren County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–7721

Clear Creek	At Tiffintown Road	+144	(Warren County, Unincorporated Areas).
	Approximately 6,490 feet upstream of Tiffintown Road	+150	
Clear Creek Tributary 1	At Tiffintown Road	+144	(Warren County, Unincorporated Areas).
	Approximately 1,825 feet upstream of Tiffintown Road	+145	
Crouches Creek	Approximately 840 feet downstream of confluence with Crouches Creek Tributary 2.	+155	(Warren County, Unincorporated Areas).
	Approximately 2,730 feet upstream of confluence with Crouches Creek Tributary 2.	+164	
Crouches Creek Tributary 2	At confluence with Crouches Creek	+159	(Warren County, Unincorporated Areas).
	At Freetown Road	+165	
Crouches Creek Tributary 3	At confluence with Crouches Creek	+159	(Warren County, Unincorporated Areas).
	Approximately 2,970 feet upstream of confluence with Crouches Creek.	+166	
Glass Bayou	At Fort Hill Drive	+123	City of Vicksburg.
	At Evergreen Drive	+208	
Muddy Creek	At Tucker Road	+148	(Warren County, Unincorporated Areas).
	Approximately 4,565 feet upstream of TuckerRoad	+150	
Muddy Creek Tributary 1	At confluence with Muddy Creek	+148	(Warren County, Unincorporated Areas).
	Approximately 2,970 feet upstream of confluence with Muddy Creek.	+176	
Paces Bayou	At U.S. Highway 61	+96	City of Vicksburg (Warren County, Unincorporated Areas).
	Approximately 3,530 feet upstream of U.S. Highway 61	+108	
Paces Bayou Tributary 1	At Redbone Road	+121	City of Vicksburg.
	Approximately 1,390 feet upstream of Redbone Road	+123	
Paces Bayou Tributary 3	At Redbone Road	+115	City of Vicksburg, (Warren County, Unincorporated Areas).
	Approximately 2,040 feet upstream of Redbone Road	+118	
Silver Creek	Approximately 1,500 feet downstream of confluence with Silver Creek Tributary 2.	+162	(Warren County, Unincorporated Areas).
	Approximately 8,615 feet upstream of confluence with Silver Creek Tributary 3.	+259	
Silver Creek Tributary 2	Approximately 745 feet upstream of confluence with Silver Creek.	+181	(Warren County, Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 4,890 feet upstream of confluence with Silver Creek.	+217	
Silver Creek Tributary 3	Approximately 1,070 feet upstream of confluence with Silver Creek.	+191	(Warren County, Unincorporated Areas).
	Approximately 4,975 feet upstream of confluence with Silver Creek.	+228	
Stouts Bayou	At Interstate 20	+122	City of Vicksburg.
	At Spring Street	+197	

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

ADDRESSES

City of Vicksburg

Maps are available for inspection at 1401 Walnut Street, Vicksburg, MS 39180.

Warren County (Unincorporated Areas)

Maps are available for inspection at 913 Jackson Street, Vicksburg, MS 39183.

Cabarrus County, North Carolina and Incorporated Areas
Docket Nos.: FEMA–B–7718, FEMA–B–7736, FEMA–D–7820, and FEMA–B–7752

Adams Creek	Approximately 150 feet upstream of NC 73	+630	Unincorporated Areas of Cabarrus County.
	Approximately 1,460 feet upstream of NC 73 Highway E	+630	
Afton Run	Approximately 50 feet upstream of Dogwood Boulevard	+665	City of Kannapolis.
	Approximately 1.5 miles upstream of Dogwood Boulevard	+710	
Anderson Creek	Approximately 50 feet upstream of Bethel Church Road (State Road 1125).	+566	Unincorporated Areas of Cabarrus County.
	Approximately 900 feet upstream of Sam Black Road (State Road 1127).	+613	
Anderson Creek Tributary 1	At the confluence with Anderson Creek	+575	Unincorporated Areas of Cabarrus County.
	At Sam Black Road (State Road 1127)	+611	
Caldwell Creek Tributary	Approximately 1,125 feet upstream of the confluence with Caldwell Creek.	+593	Unincorporated Areas of Cabarrus County.
	Approximately 1,700 feet upstream of Pioneer Mill Road (State Road 1134).	+669	
Chambers Branch	Approximately 110 feet upstream of U.S. Highway 29	+702	City of Kannapolis.
	Approximately 1,180 feet upstream of East 1st Street	+718	
Clear Creek	At the confluence with Rocky River	+469	Unincorporated Areas of Cabarrus County, Town of Midland.
	Approximately 150 feet upstream of the Cabarrus/Mecklenburg County boundary.	+536	
Coddle Creek	Approximately 150 feet downstream of Coddle Creek Dam	+620	Unincorporated Areas of Cabarrus County.
	At the Rowan/Cabarrus/Iredell County boundary	+674	
Coddle Creek Tributary 1	Approximately 500 feet upstream of the confluence with Coddle Creek.	+543	Unincorporated Areas of Cabarrus County, City of Concord.
	Approximately 1,800 feet upstream of Rocky River Road (State Road 1139).	+555	
Coddle Creek Tributary 2	Approximately 950 feet upstream of the confluence with Coddle Creek.	+543	Unincorporated Areas of Cabarrus County, City of Concord.
	Approximately 1,300 feet upstream of Chapel Creek Road Southwest.	+551	
Coddle Creek Tributary 3	Approximately 200 feet upstream of the confluence with Coddle Creek.	+569	City of Concord.
	Approximately 1.0 mile upstream of Roberta Church Road	+598	
Cold Water Creek	At the confluence of Little Cold Water Creek	+550	Unincorporated Areas of Cabarrus County, City of Concord, City of Kannapolis.
	Approximately 0.5 mile upstream of Moose Road	+653	
Common Ford Branch	Approximately 0.4 mile upstream of Penninger Road (State Road 2113).	+618	Unincorporated Areas of Cabarrus County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1.5 miles upstream of Penninger Road (State Road 2113).	+682	
Dutch Buffalo Creek	Approximately 150 feet upstream of NC 73	+524	Unincorporated Areas of Cabarrus County.
	Approximately 1,120 feet upstream of Sapp Road (State Road 2402).	+684	
Dutch Buffalo Creek Tributary 1.	At the confluence with Dutch Buffalo Creek	+674	Unincorporated Areas of Cabarrus County.
	Approximately 0.7 mile upstream of Pless Road (State Road 2432).	+688	
Horton Branch	Approximately 80 feet upstream of Bethel Church Road (State Road 1125).	+575	Unincorporated Areas of Cabarrus County.
	Approximately 0.6 mile upstream of Sam Black Road (State Road 1127).	+632	
Irish Buffalo Creek	Approximately 600 feet upstream of Cannon Farm Road	+733	City of Kannapolis.
	Approximately 0.9 mile upstream of Cannon Farm Road	+744	
Irish Buffalo Creek Tributary 1.	Approximately 350 feet upstream of the confluence with Irish Buffalo Creek.	+611	City of Concord.
	Approximately 910 feet upstream of Hanover Drive Northwest.	+639	
Irish Buffalo Creek Tributary 2.	Approximately 1,200 feet upstream of the confluence with Irish Buffalo Creek.	+624	City of Concord, City of Kannapolis.
	Approximately 1,950 feet upstream of Orphanage Road	+645	
Irish Buffalo Creek Tributary 3.	Approximately 750 feet upstream of the confluence with Irish Buffalo Creek.	+671	City of Kannapolis.
	Approximately 500 feet upstream of Mooresville Road	+704	
Irish Buffalo Creek Tributary 4.	Approximately 1,250 feet upstream of the confluence with Irish Buffalo Creek.	+735	City of Kannapolis.
	Approximately 0.7 mile upstream of the confluence with Irish Buffalo Creek.	+745	
Irish Buffalo Creek Tributary 5.	Approximately 1,350 feet upstream of the confluence with Irish Buffalo Creek.	+735	City of Kannapolis.
	Approximately 0.7 mile upstream of the confluence with Irish Buffalo Creek.	+750	
Jones Branch	Approximately 500 feet upstream of the confluence with Rocky River.	+530	Unincorporated Areas of Cabarrus County.
	Approximately 1,690 feet upstream of Falcon Drive (State Road 1269).	+595	
Lick Branch	At the confluence with Dutch Buffalo Creek	+666	Unincorporated Areas of Cabarrus County.
	Approximately 1,160 feet upstream of Sapp Road (State Road 2402).	+740	
Little Buffalo Creek	At the confluence with Dutch Buffalo Creek	+531	Unincorporated Areas of Cabarrus County.
	Approximately 1.9 miles upstream of Drye Road (State Road 2443).	+593	
Little Meadow Creek	Approximately 100 feet upstream of Reed Mine Road (State Road 1100).	+501	Unincorporated Areas of Cabarrus County.
	Approximately 330 feet upstream of County Line Road (State Road 2623).	+607	
Mallard Creek	Approximately 2,250 feet upstream of Morehead Road	+570	Unincorporated Areas of Cabarrus County, Town of Harrisburg.
	At the Cabarrus/Mecklenberg County boundary	+576	
Mallard Creek Tributary 1	At the confluence with Mallard Creek	+571	Town of Harrisburg.
	At the Cabarrus/Mecklenberg County boundary	+590	
Mallard Creek Tributary 1A	At the confluence with Mallard Creek Tributary 1	+571	Town of Harrisburg.
	Approximately 1.0 mile upstream of the confluence with Mallard Creek Tributary 1.	+643	
Mallard Creek Tributary 1B	At the confluence with Mallard Creek Tributary 1	+586	Town of Harrisburg.
	Approximately 1,650 feet upstream of the confluence with Mallard Creek Tributary 1.	+623	
Mallard Creek Tributary 2	At the confluence with Mallard Creek	+573	City of Concord, Town of Harrisburg.
	Approximately 1,290 feet upstream of Hudspeth Road (State Road 1302).	+634	
Meadow Creek	Approximately 1,500 feet downstream of Reed Mine Road (State Road 1100).	+495	Unincorporated Areas of Cabarrus County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 0.5 mile upstream of Reed Mine Road (State Road 1100).	+500	
Mill Creek	At the confluence with Coddle Creek	+650	Unincorporated Areas of Cabarrus County, City of Kannapolis.
	Approximately 100 feet upstream of the Cabarrus/Rowan County boundary.	+715	
Miller Branch	Approximately 250 feet upstream of the confluence with Irish Buffalo Creek.	+656	Unincorporated Areas of Cabarrus County, City of Kannapolis.
	Approximately 0.9 mile upstream of Mooresville Road	+767	
Morris Branch	Approximately 660 feet upstream of the confluence with Rocky River.	+566	Town of Harrisburg.
	Approximately 1,280 feet upstream of Rocky River Crossing Road.	+602	
Muddy Creek	At the confluence with Rocky River	+478	Unincorporated Areas of Cabarrus County, Town of Midland.
Muddy Creek Tributary 1	At the confluence with Muddy Creek	+492	Unincorporated Areas of Cabarrus County, Town of Midland.
	Approximately 150 feet upstream of NC 24–27 Highway E	+525	
Overcash Branch	Approximately 1,000 feet upstream of the confluence with Irish Buffalo Creek.	+664	City of Kannapolis.
	Approximately 740 feet upstream of Quailwoods Court	+697	
Park Creek	At the confluence with Coddle Creek	+652	Unincorporated Areas of Cabarrus County.
	At the Cabarrus/Rowan County boundary	+679	
Patterson Branch Tributary	Approximately 75 feet upstream of the confluence with Patterson Branch.	+703	City of Kannapolis.
	Approximately 1,800 feet upstream of Beaumont Avenue	+747	
Ridenhour Branch	At the downstream side of Colfax Drive Southeast (State Road 2513).	+552	Unincorporated Areas of Cabarrus County, City of Concord.
	Approximately 0.5 mile upstream of the confluence of Ridenhour Branch Tributary.	+628	
Ridenhour Branch Tributary	At the confluence with Ridenhour Branch	+599	Unincorporated Areas of Cabarrus County, City of Concord.
	Approximately 1.2 miles upstream of Lake Lynn Road (State Road 2640).	+671	
Rocky River	At the Union/Stanly/Cabarrus County boundary	+469	Unincorporated Areas of Cabarrus County, City of Concord, City of Kannapolis, Town of Harrisburg, Town of Midland.
	At the Cabarrus/Mecklenberg/Iredell County boundary	+687	
Rocky River Tributary 11	Approximately 200 feet downstream of NC 200	+508	Unincorporated Areas of Cabarrus County.
	Approximately 0.7 mile upstream of NC 200	+555	
Rocky River Tributary 14	Approximately 500 feet upstream of confluence with Rocky River.	+561	Town of Harrisburg.
	Approximately 1,700 feet upstream of Rocky River Crossing Road.	+574	
Rogers Lake Branch	Approximately 100 feet upstream of Rogers Lake Road	+715	City of Kannapolis.
	Approximately 190 feet upstream of Richard Avenue	+742	
Royal Oaks Branch	Approximately 350 feet upstream of the confluence with Cold Water Creek.	+582	Unincorporated Areas of Cabarrus County, City of Concord, City of Kannapolis.
	Approximately 650 feet upstream of Lake Concord Road	+660	
Shamrock Branch	Approximately 75 feet downstream of Wilson Street	+595	City of Concord.
	Approximately 1,050 feet upstream of Shamrock Street Northeast.	+644	
Stricker Branch	Approximately 750 feet upstream of the confluence with Irish Buffalo Creek.	+597	City of Concord.
	Approximately 180 feet upstream of NC 73	+636	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Threemile Branch	At the confluence with Cold Water Creek	+558	City of Concord, City of Kannapolis.
	Approximately 370 feet upstream of Plymouth Street	+751	
Water Creek	Approximately 500 feet upstream of the confluence with Little Cold Water Creek.	+586	Unincorporated Areas of Cabarrus County.
	Approximately 0.7 mile upstream of Gold Hill Road (State Road 2408).	+625	
Yow Branch	Approximately 80 feet upstream of NC 200	+507	Unincorporated Areas of Cabarrus County, Town of Mount Pleasant.
	Approximately 1,130 feet upstream of NC 200 Highway	+507	

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

ADDRESSES

City of Concord

Maps are available for inspection at City of Concord GIS Division, 66 Union Street South, Concord, North Carolina.

City of Kannapolis

Maps are available for inspection at Kannapolis City Hall, 246 Oak Avenue, Kannapolis, North Carolina.

Town of Harrisburg

Maps are available for inspection at Harrisburg Town Hall, 4100 Main Street, Suite 101, Harrisburg, North Carolina.

Town of Midland

Maps are available for inspection at Midland Town Hall, 4293B Highway 24–27 East, Midland, North Carolina.

Town of Mount Pleasant

Maps are available for inspection at Mount Pleasant Town Hall, 8590 Park Drive, Mount Pleasant, North Carolina.

Unincorporated Areas of Cabarrus County

Maps are available for inspection at Cabarrus County Planning Services Department, 65 Church Street Southeast, Concord, North Carolina.

Fayette County, Tennessee, and Incorporated Areas
Docket Nos.: FEMA–B–7702 & FEMA–D–7824

Cane Creek	At the confluence of Little Cypress Creek	+278	Fayette County (Unincorporated Areas), Town of Gallaway.
	Approximately 7,000 feet upstream of Centerpoint Drive	+297	
Cane Creek Tributary	At the confluence with Cane Creek	+284	Town of Gallaway.
	Approximately 800 feet upstream of Highway 70	+295	
Cypress Creek	Just upstream of Highwy 64	+296	Fayette County (Unincorporated Areas).
	Approximately 1,300 feet upstream of State Highway 196	+310	
Grays Creek	Approximately 1,980 feet southwest of the intersection of Seward Drive and Jacobs Way.	+343	Fayette County (Unincorporated Areas).
	Approximately 4,980 feet southwest of the intersection of Seward Drive and Walnut Hill Way.	+359	
North Fork Wolf River	At the confluence with Wolf River	+339	Fayette County (Unincorporated Areas).
	Approximately 11,400 feet upstream of State Highway 76	+361	
Wolf River Unnamed Tributary 1 (Controlled by Wolf River).	Approximately 1,600 feet upstream of the confluence with Wolf River.	+300	City of Piperton, Unincorporated Areas of Fayette County.
	Approximately 5,170 feet upstream of the confluence with Wolf River.	+300	
Wolf River Unnamed Tributary 2 (Controlled by Wolf River).	Approximately 2,750 feet upstream of the confluence with Wolf River.	+300	Unincorporated Areas of Fayette County.
	Approximately 4,300 feet upstream of the confluence with Wolf River.	+300	

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

ADDRESSES

Town of Gallaway

Maps are available for inspection at 607 Watson Drive, Gallaway, TN 38036.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
City of Piperton			
Maps are available for inspection at 3575 Highway 196, Piperton, TN 38017.			
Fayette County (Unincorporated Areas)			
Maps are available for inspection at 16265 Highway 64, Suite 4, Somerville, TN 38068.			
Gibson County, Tennessee, and Incorporated Areas Docket No.: FEMA–B–7740			
Clear Creek	At the confluence with Wolf Creek	+396	Unincorporated Areas of Gibson County.
	Approximately 2,300 feet upstream of the confluence with Wolf Creek.	+401	
Wolf Creek	Approximately 480 feet upstream of State Highway 104	+395	Unincorporated Areas of Gibson County.
	Approximately 2,211 feet upstream of State Highway 104	+397	

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

ADDRESSES

Unincorporated Areas of Gibson County

Maps are available for inspection at 309 S. College Street, Trenton, TN 38382.

Obion County, Tennessee, and Incorporated Areas Docket No.: FEMA–B–7740			
Fifteenth Street Tributary	Approximately 1,740 feet upstream of the confluence with Richland Creek.	+284	Unincorporated Areas of Obion County.
	At the confluence with Richland Creek	+284	
Grove Creek	Approximately 2,070 feet downstream of State Highway 22	+311	Unincorporated Areas of Obion County.
	Approximately 950 feet downstream of State Highway 22	+313	
Hoosier Creek	Approximately 1,950 feet downstream of State Highway 3	+314	Unincorporated Areas of Obion County.
	Approximately 1,250 feet downstream of State Highway 3	+314	
Johnson Hurt Avenue Tributary.	At the confluence with Obion River	+284	Unincorporated Areas of Obion County.
	Approximately 1,070 feet upstream of the confluence with Obion River.	+284	
Obion River	Just upstream of State Highway 3	+284	Unincorporated Areas of Obion County.
	Approximately 2,400 feet upstream of State Highway 211	+284	
Obion River Drainage Canal	Just upstream of State Highway 3	+284	Unincorporated Areas of Obion County.
	Approximately 4,280 feet upstream of State Highway 211	+284	
Old Obion River Drainage Canal.	Just upstream of State Highway 3	+284	Unincorporated Areas of Obion County.
	Approximately 2,800 feet upstream of State Highway 211	+284	
Pursley Creek	Approximately 320 feet upstream Nailing Drive	+323	Unincorporated Areas of Obion County.
	Approximately 800 feet downstream of State Highway 3	+332	
Richland Creek	At the confluence with Obion River	+284	Unincorporated Areas of Obion County.
	Approximately 100 feet downstream of West Palestine Road.	+284	

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

ADDRESSES

Unincorporated Areas of Obion County

Maps are available for inspection at County Mayor, P.O. Box 236, Union City, TN 38281.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Rhea County, Tennessee, and Incorporated Areas Docket No.: FEMA–B–7740			
Little Richland Creek Tributary.	At the confluence of Little Richland Creek	+695	City of Dayton, Unincorporated Areas of Rhea County.
	Approximately 210 feet downstream of Back Valley Road	+736	

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

ADDRESSES

City of Dayton

Maps are available for inspection at Dayton City Hall, 399 First Avenue, Dayton, TN 37321.

Unincorporated Areas of Rhea County

Maps are available for inspection at Rhea County Property Assessor's Office, 375 Church Street, Suite 100, Dayton, TN 37321.

Weakley County, Tennessee, and Incorporated Areas			
Docket No.: FEMA–B–7740			
Cane Creek	Approximately 50 feet upstream of Mount Pelia Road	+337	Unincorporated Areas of Weakley County.
	Approximately 450 feet downstream of the confluence with Cane Creek Tributary.	+344	
Cane Creek Tributary	Just Upstream of Gardener Hyndsver Road	+363	Unincorporated Areas of Weakley County.
	Approximately 70 feet downstream of Old Fulton Road	+371	
Mud Creek	Just downstream of State Route 22	+365	City of Dresden.
	Approximately 900 feet upstream of Boydenville Road	+402	

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

ADDRESSES

City of Dresden

Maps are available for inspection at 117 W. Main Street, Dresden, TN 38225.

Unincorporated Areas of Weakley County

Maps are available for inspection at 116 W. Main Street, Dresden, TN 38225.

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

Dated: May 9, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10931 Filed 5–15–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 153

[Docket ID FEMA–2005–0001; Legacy ID DHS–2005–0006]

RIN 1660–AA34

Assistance Program Under the 9/11 Heroes Stamp Act of 2001

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The 9/11 Heroes Stamp Act of 2001 directed the United States Postal Service to issue a semipostal stamp and distribute the proceeds through the Federal Emergency Management Agency (FEMA) to the families of emergency relief personnel killed or permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001. In response, FEMA issued interim regulations that governed the distribution of those funds. Now that all funds have been distributed and all appeals resolved, FEMA is issuing this Final rule to remove the interim regulations from the Code of Federal Regulations.

DATES: This final rule is effective May 16, 2008.

FOR FURTHER INFORMATION CONTACT: Jotham Allen, Office of Chief Counsel, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW., Room 840, Washington, DC 20472, (phone) 202–

646–1957, (facsimile) 202–646–4536, or (e-mail) *Jotham.allen@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The 9/11 Heroes Stamp Act of 2001, Public Law 107–67, sec. 652, 115 Stat. 557 (Nov. 12, 2001) (Heroes Stamp Act), directed the United States Postal Service (USPS) to issue a semipostal stamp and distribute the proceeds through the Federal Emergency Management Agency (FEMA) to the families of emergency relief personnel killed or permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001.

A semipostal stamp is a type of postage that is sold for a value greater than that of a regular first class stamp. The proceeds from the price differential between the sale price of the stamp and the cost of the postage fund the distribution, minus the USPS' cost to produce and distribute the stamps. No administrative costs were deducted by FEMA. The USPS issued the Heroes semipostal stamp in June 2002, and stopped selling it on December 31, 2004. The sum of $10,565,073.61 was provided to FEMA by USPS from stamp sales during that time period.

On July 26, 2005, FEMA published an interim rule at 70 FR 43214 establishing a program to distribute the funds raised from the sale of the Heroes semipostal stamp. Under the program, eligible claimants were those emergency relief personnel acting in their official capacity who were permanently physically disabled, or the families of such personnel who were killed in the line of duty while serving at the World Trade Center, Pentagon, or Shanksville, PA site in connection with the terrorist attacks against the United States on September 11, 2001. In determining whether a claimant had a permanent physical disability, FEMA relied on determinations made by appropriate Federal, State, and local agencies, as well as appropriate private entities.

The interim rule also created an appeals process. This process allowed an applicant to appeal a determination made by FEMA that the applicant was not eligible. The applicant was required to submit a notice of intent to appeal within 15 calendar days of the issuance of FEMA's determination of eligibility. The written appeal could not exceed 15 pages, exclusive of supporting documentation, and had to be submitted within 60 calendar days of the issuance of FEMA's determination of eligibility. New documentation was accepted on appeal. Appeals determinations were made by the Appeals Specialist in FEMA's Office of Dispute Resolution.

The amount of assistance granted under the Heroes Stamp Act was within FEMA's discretion. The interim final rule established that FEMA would, to the extent possible, distribute the funds equally among all eligible claimants until the fund was liquidated. Multiple distributions were allowed with monies set aside for applicants who appealed their initial determination of ineligibility. On December 7, 2005, FEMA published a notice (70 FR 72845) that announced that the application period for the Assistance Program Under the 9/11 Heroes Stamp Act of 2001 would run from December 2, 2005 to April 3, 2006.

Eligibility determinations were made by the Heroes Stamp Panel who conducted nine meetings between February and November 2006 to make the determinations. Applicants were considered on a rolling basis and were informed of their eligibility decisions by United States mail. Of the 1,945 total applications received during the application period, the Panel deemed 1,356 eligible. Each applicant received a letter notifying them of their eligibility determination, and for those deemed eligible, FEMA provided an Electronic Funds Transfer form to be completed and returned to FEMA. Between November 2006 and April 2007, FEMA distributed $7,400 to each eligible applicant, who supplied the necessary banking information for the Electronic Funds Transfer.

Of the 589 applicants found ineligible, 64 submitted appeals. During the appeals process, 21 of these applicants submitted additional information and were found eligible. This brought the total number of eligible applicants to 1,377. In July 2007, the remaining amount of the fund was distributed. In total, 1,357 of the eligible applicants received $7,672.53; the final 20 applicants received $7,672.52. This difference was required in order to liquidate the entire amount of the funds raised.

II. Discussion of Public Comments

FEMA received 36 comments from the public regarding the interim rule. The comments received, together with FEMA's responses, are set forth below. All previously published rulemaking documents, as well as all comments received are available in the public docket for this rulemaking. The public docket for this rulemaking is available online by conducting a search for Docket ID FEMA–2005–0001 or Legacy ID DHS–2005–0006, at the Federal e-Rulemaking Portal at *www.regulations.gov.*

Continuation of semipostal stamp: Two comments suggested that the Heroes semipostal stamp should be continued. FEMA could not implement this suggestion. The Heroes Stamp Act specified that the stamp be issued for such period of time that USPS considered necessary and appropriate, but in no event could it continue issuing the stamp after December 31, 2004. USPS discontinued selling the Heroes semipostal stamp on December 31, 2004.

Eligibility: Seven comments suggested that iron, steel, and construction workers should be included in the definition of emergency relief personnel; one comment expressed concern that HAZMAT response teams might not be eligible under the program; seven comments suggested that the funds should be available to all victims of September 11, 2001, not just emergency relief personnel; three comments suggested that non-uniformed volunteers should be eligible to receive funds; and another commenter suggested that the funds should only be distributed to rescue workers and emergency volunteers who have been disabled and that the funds should not be distributed to the police and firefighter families unless there are extenuating circumstances.

While FEMA recognizes that iron, steel, and construction workers performed an invaluable service in response to the terrorist attacks of September 11, 2001, FEMA determined that these workers did not fall within the statutory definition of emergency relief personnel set out in the Heroes Stamp Act. The statutory definition of emergency relief personnel included a specific list of occupations, which did not include iron, steel, or construction workers. It included firefighters, law enforcement officers, paramedics, emergency medial technicians, and members of the clergy. The Heroes Stamp Act did provide for inclusion in that definition ''other individuals (including employees of legally organized and recognized volunteer organizations, whether compensated or not) who, in the course of professional duties, respond to fire, medical, hazardous material, or other similar emergencies.'' FEMA determined that iron, steel, and construction workers do not fall under the statutory definition because they do not typically respond, in the course of their professional duties, to fire, medical, hazardous material, or other similar emergencies.

The language of the statute also limited FEMA from distributing the

funds to all victims of the September 11, 2001 attacks, or to all individuals who provided assistance. The Heroes Stamp Act directed that the funds were for emergency workers who had been permanently disabled and the families of emergency workers killed. The Heroes Stamp Act contained no provisions regarding other civilian victims. Furthermore, the Act did not give FEMA discretion relating to need or extenuating circumstances. It was left to FEMA's discretion to determine the distribution of the funds, and it decided to distribute funds equally among all eligible applicants, including the families of police and firefighters.

With respect to HAZMAT responders, FEMA did consider them to be in an eligible class of responders. The interim rule used the same definition for emergency relief personnel as the Heroes Stamp Act, which includes response to hazardous material: ''firefighters, law enforcement officers, paramedics, emergency medical technicians, members of the clergy, or other individuals * * * who, in the course of professional duties, respond to fire, medical, *hazardous material,* or other similar emergencies'' (emphasis added). Although FEMA did not keep a tally sheet of each class of worker who received funds from sale of the stamp, FEMA would have considered a HAZMAT worker to be well within the statutory definition of emergency relief personnel set out in the Heroes Stamp Act.

Amount of funds distributed to each applicant: Three comments suggested that the funds raised through the sale of the Heroes semipostal stamp should be divided equally among all eligible applicants, while one comment suggested that those applying on behalf of deceased individuals should receive larger distribution than permanently disabled applicants. It was also suggested that geographic cost of living differences should be taken into account.

The Heroes Stamp Act left the manner of distribution within FEMA's discretion. The funds were, to the extent possible, distributed equally among the eligible applicants. Factors considered by FEMA in its decision included the limited funds available to distribute, FEMA's limited ability to assess degrees of disability, and an inherent sense of fairness in providing everyone the same amount.

Interest: One comment questioned whether interest was earned on the funds, and suggested that any earned interest should be distributed to the applicants. Interest was not earned on the funds. Funds generated as the result of a statute, such as the Heroes Stamp Act, that authorizes the imposition and collection of specific charges and the use of the funds generated, are appropriated funds. In the absence of an express provision in the statute to the contrary, the funds are subject to the various restrictions and limitations on the uses of appropriated moneys (35 Comp. Gen. 615 (1956), 57 Comp. Gen. 311 (1978)). Given that these funds are appropriations, and lacking any specific statutory authority to invest and retain interest in the established fund or account, the accretions would have been required to be deposited to the Miscellaneous Receipts of the Treasury. (31 U.S.C. 3302) FEMA was prohibited from distributing any earned interest to the applicants, and therefore opted not to deposit the funds in an interest bearing account.

Distribution by FEMA: One comment asked why FEMA was distributing the funds. In the Heroes Stamp Act, Congress directed USPS to transfer the funds to FEMA to carry out distribution.

Date of distribution unclear: Three comments noted that the interim final rule did not include a date of distribution. A number of factors precluded FEMA from providing a date of distribution in the interim rule. First, the interim final rule did not include an application period. At that point, before the application period had been determined, it would not have been feasible to set a date of distribution. Additionally, when the interim rule was published FEMA had no way to determine the number of applications it would receive. Finally, because funds were distributed through Electronic Funds Transfer, the timing of distribution to each applicant depended on how quickly the applicant provided banking information.

Complicated application process: One comment stated that the application process was too complicated. FEMA made every effort to make the application process as simple as possible. The application contained detailed instructions, FEMA set up a dedicated phone number and e-mail address for questions or concerns, and questions were answered clearly and promptly. Additional information, including a copy of the interim rule was made available on the United States Fire Administration's Web site.

Unclear appeal process: Two commenters stated that the interim final rule was unclear regarding timelines and deadlines for the appeals process. FEMA disagrees. To appeal an ineligibility determination, applicants were required to submit to FEMA's Appeals Specialist a notice of intent to appeal within 15 calendar days of the issuance of FEMA's determination of eligibility. The notice was required to contain a brief statement explaining why the applicant believed the determination was incorrect. Within 60 calendar days after the issuance of FEMA's determination, the applicant was required to submit their full written appeal, not to exceed 15 pages exclusive of supporting documentation. The address to submit the notice of intent to appeal and the appeal were also provided. This information was detailed in § 153.8 of the rule. It was also restated, along with the reason for their denial, in the letters that were sent to applicants who were denied.

Contact family of victims: One comment suggested that applications from affected personnel or their survivors should be compared to known names of victims to make sure no families are missed. FEMA made every effort to publicize the Heroes Stamp Program to ensure that all potentially eligible people would be aware of the program and its requirements. In addition to the interim rule and postings on the United States Fire Administration Web page, several outreach efforts were conducted prior to and early in the application process. These included face to face briefings with impacted New York City agencies and their labor unions, and discussions with agencies in Shanksville, PA, and emergency relief agencies in areas surrounding the Pentagon. Broadcast e-mails also were forwarded to all of the urban search and rescue (USAR) teams that assisted at the three locations. The media also carried stories regarding the availability of the program and how to apply. Finally, the New York City Police Department, Fire Department, and Port Authority all cooperated and coordinated with the Heroes Stamp Project office by providing special assistance and individual notification directly to survivors of the deceased about how to avail themselves of the program.

Permanent disability should not be required: One comment suggested that eligible injuries should not be required to be permanent disabilities, and two comments suggested that those with permanent mental disabilities should be eligible as well as those with permanent physical disabilities. The Heroes Stamp Act specifically limited the assistance to emergency relief personnel killed or permanently disabled. Congress left FEMA no discretion in this area. The Heroes Stamp Act did not, however, define the term ''permanently disabled''. Within its discretion, FEMA decided that the intent of the Heroes Stamp Act

was best met by interpreting that term to mean physically disabled. Validating ''permanent mental disabilities'' was found to be too difficult. Further, considering the relatively small amount of funds FEMA had to distribute, it was determined that further widening eligibility would further reduce the amount of funds available for distribution to those with clear cut permanent physical disabilities.

Focus on Pentagon and Shanksville, PA: One comment suggested that the program should focus on those who responded to the events in Shanksville, PA and at the Pentagon. The Heroes Stamp Act directed that the funds be made available to the families of emergency workers killed or permanently disabled while serving in the line of duty while responding to the terrorist attacks against the United States on September 11, 2001. FEMA believed that the Congressional intent was for the funds to be available to personnel injured or killed in response to all of the terrorist attacks against the United States on September 11, 2001. Since the terrorist attacks on September 11, 2001 took place at the World Trade Center, the Pentagon, and Shanksville, Pennsylvania, the interim rule made clear that all three locations were included in the program.

Portion for support agencies: One comment suggested that a portion of the funds should be directed to nonprofit World Trade Center agencies. The Heroes Stamp Act was clear that the funds were to be distributed to the emergency relief workers themselves or their families. The interim rule followed this statutory language. Congress left FEMA no discretion in this area.

Original intent of legislation: Two comments asked that FEMA follow the original intent of the Heroes Stamp Act. FEMA agreed. The Heroes Stamp Act states that the semipostal stamp was to be issued ''in order to afford the public a direct and tangible way to provide assistance to the families of emergency relief personnel killed or permanently disabled in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001.'' The Heroes Stamp Act directed FEMA to carry out this purpose. FEMA, within its discretion, promulgated the interim rule and distributed the funds in order to best carry out this intent.

Determinations: One comment suggested that the interim rule was unclear as to who would review applications and make final determinations on eligibility. The Heroes Stamp Act contained no provisions relating to the review process. Within its discretion, FEMA formed a Heroes Stamp Panel which conducted 9 meetings between February and November 2006 to make the final eligibility determinations on all 1,945 applications. The panel's five members represented FEMA's Office of Chief Counsel (formerly the Office of General Counsel), the Office of Legislative Affairs, and the United States Fire Administration. In making their final eligibility determinations, these individuals largely relied upon determinations of permanent physical disability made by appropriate Federal, State, and local agencies, as well as appropriate private entities.

III. Regulatory Requirements

A. Administrative Procedure Act

As noted in the interim rule, FEMA found good cause under 5 U.S.C. 553(d)(3) to issue an interim rule which would take effect upon the closure of the comment period because delay would be impracticable in light of the eligible individuals' need for relief. FEMA also noted that prompt disbursement of the benefits from the Heroes Stamp sales proceeds was in the public interest. FEMA received no adverse comments as to the finding of good cause.

Now that all funds have been distributed and all appeals resolved, FEMA is removing the regulatory text from the Code of Federal Regulations. FEMA again finds good cause not to take public comment or wait 30 days before making this rule effective under 5 U.S.C. 553(b) and (d). Because all of the funds available from the sale of the Heroes Stamp have been distributed, and all appeals have been resolved, there is no longer any need for these regulations. Allowing public comment and/or delaying the effectiveness of this rule for 30 days is unnecessary.

B. Executive Order 12866, Regulatory Planning and Review

FEMA prepared and reviewed this rulemaking under the provisions of Executive Order 12866, Regulatory Planning and Review. Although the interim rule was determined to be a significant, but not economically significant regulatory action, now that all funds have been distributed and all appeals resolved these regulations no longer serve a purpose to FEMA or the public. OMB has determined that this rule is not a significant regulatory action. OMB has not reviewed this rule.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA is not required to prepare a final regulatory flexibility analysis for this final rule because the agency has not issued a notice of proposed rulemaking.

D. National Environmental Policy Act (NEPA)

In the interim rule, FEMA determined that this rule fell within the exclusion category of 44 CFR 10.8(d)(2)(ii), which excludes from NEPA requirements the preparation, revision, adoption of regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. No commenters disagreed with our determination. The rulemaking provided for disbursement of funds received from the sale of the Heroes Stamp to emergency relief personnel who were permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001, or to the families of such personnel who were killed in such line of duty. The rule had no significant effect on the human environment. Because no other extraordinary circumstances have been identified, this rule does not require the preparation of either an environmental assessment or an environmental impact statement as defined by NEPA.

E. Executive Order 12898, Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 59 FR 7629, February 16, 1994, each Federal agency is required to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation, denying persons benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

This final rule removes regulations that implemented the 9/11 Heroes Stamp Act of 2001. The Heroes Stamp Act provided for the sale of the Heroes Stamp and for disbursement of the proceeds to emergency relief personnel who were permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001, or to the families of such personnel who were killed in such line of duty. There were no effects on human health or the environment as a result of this

rulemaking, and the Heroes Stamp funds were distributed without regard to race, color, or national origin; thus the requirements of Executive Order 12898 do not apply to this rule.

F. Congressional Review of Agency Rulemaking

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801–808. The rule is not a ''major rule'' within the meaning of that Act. This rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

G. Unfunded Mandates Reform Act

This rule is not an unfunded mandate within the meaning of the Unfunded Mandates Reform Act of 1995, 5 U.S.C. 1531–1538. This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, nor by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no action is required by the provisions of the Unfunded Mandates Reform Act of 1995.

H. Executive Order 13132, Federalism

Executive Order 13132, ''Federalism,'' (64 FR 43255, August 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications. This rule provided for the distribution of funds collected from the sale of the semipostal Heroes Stamp. It had no 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. It did not preempt any State laws. As noted in the interim rule, FEMA determined that this rule did not have sufficient federalism implications sufficient to warrant the preparation of a federalism impact statement. This final action which removes the interim regulations likewise has no federalism implications.

I. Paperwork Reduction Act

The interim rule contained information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Under the PRA, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number. The information collection, which includes FEMA Form 75–14, the 9/11 Heroes Stamp Act of 2001 Eligibility and Application for Benefits form, was approved under OMB number 1660–0091 with an expiration date of July 2008. The Paperwork Reduction Act Collection Discontinuation Form for 1660–0091 was filed on August 15, 2007.

J. Executive Order 13175, Consultation With and Coordination With Indian Tribal Governments

FEMA has reviewed this rule under Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Executive Order 12988, Civil Justice Reform

FEMA has reviewed this rule under Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects in 44 CFR Part 153

Disaster assistance, Emergency relief personnel, Terrorism.

■ Accordingly, for the reasons stated in the preamble, and under the authority of 5 U.S.C. 301 and 6 U.S.C. 101 *et seq.*, FEMA amends 44 CFR chapter 1, by removing part 153.

PART 153—[REMOVED AND RESERVED]

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–10936 Filed 5–15–08; 8:45 am]

BILLING CODE 9110–17–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217]

In the Matter of Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses.

DATES: The rule amendments to §§ 73.2090, 73.3555, 73.3598 and 73.5008 adopted in this *Report and Order* will be effective July 15, 2008. Changes to FCC Forms required as the result of the rule amendments adopted herein will become effective 30 days after the Commission publishes a notice in the **Federal Register** announcing approval by the Office of Management and Budget of the forms.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, (202) 418–2133.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217, adopted December 18, 2007, and released March 5, 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 to expand opportunities for participation in the

broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. It has long been a basic tenet of national communications policy that the widest dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. By broadening participation in the broadcast industry, the Commission seeks to strengthen the diverse and robust marketplace of ideas that is essential to our democracy. As the Supreme Court has recognized, ''Safeguarding the public's right to receive a diversity of views and information over the airwaves is * * * an integral component of the FCC's mission.'' *Metro Broadcasting, Inc.* v. *FCC,* 497 U.S. 547, 567 (1990), *overruled in part on other grounds in Adarand Constructors Inc.* v. *Pena,* 515 U.S. 200, 227 (1995). Beyond fostering viewpoint diversity, the Commission also believes that taking steps to facilitate the entry of new participants into the broadcasting industry may promote innovation in the field because in many cases, the most potent sources of innovation often arise not from incumbents but from new entrants. The Commission believes that this may be particularly true with respect to small businesses, including those owned by minorities and women. Expanding the pool of potential competitors in media markets to include such businesses should bring new competitive strategies and approaches by broadcast station owners in ways that benefit consumers in those markets. The new rules will help eligible entities with access to financing and availability of spectrum.

A. Definition of Eligible Entities

2. To define the group intended to receive the benefits of the measures adopted in the Order, the Commission uses the term ''eligible entity,'' defined as an entity that would qualify as a small business consistent with Small Business Administration (''SBA'') standards for its industry grouping, based on revenue. At present, the SBA defines as a small business a television broadcasting station that has no more than $13 million in annual receipts and a radio broadcasting entity that has no more than $6.5 million in annual receipts. To determine qualifications as a small business, the SBA considers the revenues of the parent corporation and affiliates of the parent corporation, not just the revenues of individual broadcast stations. In addition, in order to ensure that ultimate control rests in an eligible entity that satisfies the revenue criteria, the entity must satisfy one of several control tests. The eligible entity must hold: (1) 30 percent or more of the stock/partnership shares and more than 50 percent voting power of the corporation or partnership that will hold the broadcast license; or (2) 15 percent or more of the stock/partnership shares and more than 50 percent voting power of the corporation or partnership that will hold the broadcast licenses, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or (3) more than 50 percent of the voting power of the corporation if the corporation that holds the broadcast licenses is a publicly traded company. The Commission concludes that use of this definition of ''eligible entity'' will advance its objectives of promoting diversity of ownership in the broadcast industry by making it easier for small businesses and new entrants—that otherwise might find it difficult or impossible to compete—to acquire a license and attract the capital necessary to compete in the marketplace with larger and better financed companies. In addition, by facilitating entry into the broadcast industry by new entrants, the Commission hopes that these measures will result in a wider array of programming services, including some that are responsive to local needs and interests and audiences that are currently underserved. The Commission anticipates that small businesses will be more likely than large corporations to have ties to the communities that they seek to serve, and thus be more attuned to local needs and interests.

B. Actions To Expand Opportunities for Eligible Entities

3. *Revision of Rules Regarding Construction Permit Deadlines.* The Order revises § 73.3598 of the Commission's rules to afford eligible entities that acquire an expiring construction permit additional time to build out the facility. Specifically, the Commission allows eligible entities the time remaining on the original construction permit or 18 months, whichever is greater. Section 73.3598 requires that each construction permit for the construction of a new TV, AM, FM, international broadcast, low power TV, TV translator, TV booster, FM translator or FM booster station must specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and an application for license filed. Construction permits for new LPFM stations allow permittees 18 months to complete construction and file a license application. Generally, any construction permit for which construction has not been completed, and for which an application for license has not been filed, is automatically forfeited upon expiration without any further affirmative cancellation by the Commission. The Commission believes that the extra time the Order provides to eligible entities acquiring an expiring construction permit will advance diversity of ownership, as broadcasters that otherwise would forfeit their construction permits would be motivated to sell them to eligible entities as an alternative. Moreover, it will serve as an appropriate accommodation of the capital constraints and other financial issues that small businesses often confront. The Commission believes that service to the public would be expedited by providing eligible entities up to 18 months additional time to complete construction of an expiring permit, rather than allowing the permit to expire and auctioning the allotment a second time.

4. *Modification of Attribution Rule.* The Order revises the Commission's equity/debt plus (''EDP'') attribution standard to facilitate investment in eligible entities. The Commission's broadcast attribution rules define which financial or other interests in or relationships with a licensee are counted in applying the broadcast ownership rules. The rules ''seek to identify those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions.'' At the same time, the attribution rules are designed to ''permit arrangements in which a particular ownership or positional interest involves minimal risk of influence, in order to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry.'' With regard to corporate entities, the broadcast attribution rules generally attribute voting stock interests of five percent or more. Minority stock interests in a corporation with a single-majority shareholder, non-voting stock interests, warrants, debt, properly insulated limited partnership and LLC interests, and unexercised options are not attributable, unless the EDP rule is triggered.

5. The EDP rule is designed to resolve concerns that multiple non-attributable interests could be combined to allow the holders to exert significant influence over licensees such that these interests should be counted in applying the multiple ownership rules. Under the

EDP rule, where an investor is either (1) a major program supplier (providing programming constituting over 15 percent of a broadcast station's total weekly broadcast programming hours); or (2) a same-market media entity subject to the broadcast multiple ownership rules, its interest in a licensee or other media entity will be attributed if that interest, aggregating both debt and equity holdings, exceeds 33 percent of the total assets (equity plus debt) of the licensee or media entity. In other words, attribution results where the financial interest exceeds 33 percent and there is a triggering relationship, i.e., either the investor is a major program supplier or a same-market media entity subject to the broadcast multiple ownership rules. The EDP rule limits the single majority shareholder attribution exemption, as well as the exemptions from attribution applicable to non-voting stock, debt, and properly insulated interests in limited partnerships and LLCs. The EDP rule applies to all of the broadcast ownership rules.

6. Under the revision adopted in the Order, the Commission will allow the holder of an equity or debt interest in a media outlet subject to the media ownership rules to exceed the 33 percent threshold set forth in Note 2(i) to § 73.3555 of the rules without triggering attribution where such investment would enable an eligible entity to acquire a broadcast station, provided that: (1) The combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or (2) the total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. These higher investment limits in eligible entities also apply for purposes of determining eligibility for the new entrant bidding credit in broadcast auctions, as the standards for determining attribution in a winning bidder parallel the attribution standards in § 73.3555, Note 2, which the Commission revises in this Order.

7. The Commission finds sufficient evidence in the record to show that difficulty in accessing capital investment currently is inhibiting diversity of ownership of broadcast stations and new entry. Moreover, the Commission thinks it is reasonable to conclude that modification of the EDP rule could alleviate or, at the least, minimize this problem. The Commission believes that this modification will further its goal of improving access to capital in order to foster diversity of ownership, new entry, and, ultimately, the provision of new programming and other services to the public. The Commission finds sufficient evidence in the record warrants a change in its policy. The Commission also believes that the changes it is making in the Order will retain regulatory certainty for entities in planning their financial transactions, an important goal of the attribution rules, which are designed as bright line tests. Finally, it believes that the public interest weighs in favor of allowing existing broadcasters to acquire a minority equity ownership interest in an eligible entity in order to provide the opportunity for such a new entrant to enter the broadcasting market.

8. *Distress Sale Policy.* The Commission's distress sale policy permits ''a licensee whose license has been designated for revocation hearing, or whose renewal application has been designated for hearing on basic qualifications issues, to assign its license prior to commencement of the hearing to a minority controlled entity'' at a price that is substantially below its fair market value. Under this policy, a licensee facing the possible loss of its license can sell the station in a ''distress sale.'' The licensee faces a substantial financial penalty as a result of the ''distress'' sale but recoups a portion of the value of its station and avoids the revocation or renewal hearing. The Commission saves the time and expense of conducting a revocation or renewal hearing and subsequent appeals. Most important, the station is placed expeditiously in the hands of a qualified operator that might otherwise have few opportunities to acquire a station, and the public does not lose service from a local broadcast station. In the Order, the Commission decided to place the distress sale policy on a sound constitutional and administrative footing by allowing a licensee whose license has been designated for a revocation hearing or whose renewal application has been designated for a hearing on basic qualifications issues to sell its station prior to the commencement of the hearing to an ''eligible entity,'' as defined in the Order. The Commission believes that this action will promote diversity of ownership in the broadcast industry by making it easier for small businesses and new entrants, including minority-owned businesses, to purchase stations. This, in turn, may result in a greater diversity of program services, including services that are responsive to local needs and interests and the interests of underserved audiences. Similar to the Commission's new rule facilitating the transfer of expiring construction permits to eligible entities, the modified distress sale policy can expedite new service or facilitate the continuation of existing service to the public by avoiding lengthy revocation or renewal hearings and subsequent appeals, and it also conserves substantial private and Commission resources that would otherwise be devoted to such proceedings. The Commission believes this action will serve the public interest by aiding the swift delivery of new services to the public, and the conservation of public and private resources.

9. *Ban on Discrimination in Broadcast Transactions.* The Order adopts a rule that bars discrimination on the basis of race or gender and related protected categories in broadcast transactions. Specifically, the rule states that, ''No qualified person or entity shall be discriminated against on the basis of race, color, religion, national origin or sex in the sale of commercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part).'' Adoption of a nondiscrimination rule with respect to sales is consistent with the Commission's statutory mandate under 47 U.S.C. 257, which directs the Commission to identify and eliminate, through regulatory action, market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, in order to promote the policies and purposes of the Act favoring diversity of media voices, vigorous economic competition, technological advancement, and the promotion of the public interest, convenience and necessity. The new rule will also advance the statutory goal of fostering minority and female ownership in the provision of commercial spectrum-based services and will advance the Commission's public-interest mandate to foster viewpoint diversity by promoting the dissemination of licenses to a wide variety of applicants. The new rule will require sellers to certify compliance with this rule against discrimination by checking a box on Form 314 or 315 applications, which will be amended accordingly.

10. *''Zero Tolerance'' Policy for Ownership Fraud.* The Commission adopts a ''zero tolerance'' policy for ownership fraud and reaffirms its principle that applicants' representations to the Commission must be complete and correct. A commenter

notes that ownership fraud occurs when real-parties-in-interest structure transactions so that the principals of the putative applicant entity have no real voice in practice. The commenter states that such fraud may be relatively common. Ownership fraud could impede the Commission's efforts to assess or increase media ownership diversity. The Commission recognizes that rules granting preferences to qualified applicants encourage applicants to qualify for the preference and that some potential applicants will try to claim the preference by creating an appearance of qualification that does not accord with reality. Because the risk of such fraud arises whenever some applicants can obtain a preference, the Commission concludes that adopting a ''zero tolerance'' policy will help deter and detect ownership fraud. Accordingly, the Order adopts a ''zero-tolerance'' policy for ownership fraud and states that the Commission should ''fast-track'' ownership-fraud claims and seek to resolve them within 90 days.

11. *Non-Discrimination Provisions in Advertising Sales Contracts.* The Commission adopts a proposal to require broadcasters renewing their licenses to certify that their advertising sales contracts contain nondiscrimination clauses that prohibit all forms of discrimination. The Commission adopts this requirement in light of reports that some advertising contracts contain ''no urban/no Spanish dictates'' that are intended to minimize the proportion of African American or Hispanic customers patronizing an advertiser's venue—or that presume that African Americans or Hispanics cannot be persuaded to buy an advertiser's product or service. The Order observes that such clauses may violate U.S. nondiscrimination laws. For over 20 years, the Commission has been aware of the insidious practices of certain advertisers, rep firms and advertising agencies of imposing written or unwritten ''no urban/no Spanish'' dictates. The Commission finds that discriminatory practices have no place in broadcasting and concludes that it is appropriate for the Commission to require broadcasters renewing their licenses to certify that their advertising contracts do not discriminate on the basis of race or gender and that such contracts contain nondiscrimination clauses. Broadcasters will be required to certify compliance with the new rule on their renewal applications prepared on Form 303–S. The Commission declined to dictate the specific language that advertising contracts can or should contain, given that serious First Amendment concerns could arise were the Commission to do so.

12. *Longitudinal Research on Minority and Women Ownership Trends.* Commenters argue that the Commission should conduct annual longitudinal studies of minority and female ownership. The Order agrees with these concerns, and the Commission will commence such research once it has resolved the data-gathering issues raised in the Third Further Notice accompanying the Order. The Commission agrees that longitudinal studies could help the Commission track ownership trends over time and that such studies could help scholars and other interested parties assess the impact of rule changes on minority and female ownership. It agrees that this, in turn, could help provide real-time feedback on the impact of the Commission's rules and policies on access to capital, the availability of spectrum and opportunity to minority and female-owned entities, and the ability of such entities to serve the public. It also agrees that conducting such studies annually would help it build a more robust database that could better illuminate the optimal intervals for conducting future studies. Once the Commission has collected improved information on FCC Form 323, it will conduct longitudinal studies as suggested by the commenters.

13. *Local and Regional Bank Participation in SBA Guaranteed Loan Programs.* The Commission adopts a proposal to increase Commission efforts to encourage local and regional banks to participate in SBA-guaranteed loan programs to facilitate broadcast and telecommunications-related transactions. Through its Office of Communications Business Opportunities, the Commission will work closely with the SBA to educate and encourage more local and regional banks (which historically have not been heavily involved in broadcast and telecommunications lending) to make loans through the SBA's 7(a) or 504 programs. The Commission believes that by increasing outreach to local and regional banks and to the SBA, the Commission can better assist both local banks and SBA programs to facilitate such transactions and provide potential lenders with special expertise regarding transactions. Absent such efforts, uncertainty about asset valuation could cause local and regional banks to refuse to facilitate otherwise viable transactions. Because such outcomes could frustrate Commission efforts to promote ownership and viewpoint diversity, the Commission concludes that this action is appropriate.

14. *Duopoly Priority for Companies That Finance or Incubate an Eligible Entity.* The Order adopts a proposal to give any entity that is financing or incubating an ''eligible entity'' (as that term is defined in the Order) priority if it files for a duopoly simultaneously with non-eligible entities in a market that can only support one additional duopoly. Commenters argue that ''when the local television ownership rules permit only one additional duopoly in a market, a 'race to the courthouse,' could determine which duopoly application is processed first.'' The Order agrees that one way to cure this problem is to create an incentive plan under which a company financing or incubating an eligible entity would be guaranteed a priority if it files for a duopoly simultaneously with other entities in a market that can support only one additional duopoly. This vested priority in a duopolization queue would reward the large broadcaster that had incubated or financed an eligible entity if it filed simultaneously for a duopoly with a non-incubating entity. Moreover, such a priority in the duopolization queue could have substantial value and therefore provide the added benefit of an incentive for eligible entity financing. The Commission agrees that in this situation, a general statement of policy that grants priority to entities funding or incubating eligible entities would promote ownership diversity.

15. *Extension of Divestiture Deadlines in Certain Mergers.* The Order adopts a proposal to consider requests to extend divestiture deadlines in mergers in which applicants have actively solicited bids for divested properties from eligible entities. The Commission has encouraged companies undertaking major transactions to assist small businesses, including those owned by minority and female entrepreneurs interested in purchasing divested properties. But such efforts may take time, and such entities may need additional time to secure funding to complete potential transactions. Consequently, while rigidly enforced divestiture deadlines might be intended to increase minority ownership and viewpoint diversity, they could sometimes have the perverse effect of disadvantaging potential minority owners. Because divestiture deadlines are intended to prevent undue concentration of media ownership, requests to extend these deadlines in order to facilitate acquisition of divested properties by small businesses could promote both diversity in media ownership and the objective that

divestiture seeks to achieve. Consequently, the Commission will adopt a policy of considering requests to extend divestiture deadlines when applicants have actively solicited bids for divested properties from eligible entities. The Order also adopts a proposal requiring that entities availing themselves of an extension must either sell a given property to an eligible entity within the extended deadline or have the property placed in an irrevocable trust for sale by an independent trustee to an eligible entity. This action is designed to prevent potential abuse of the extensions and ensure that the extensions will actually result in sales to eligible entities.

16. *Transfer of Grandfathered Radio Station Combinations to Non-Eligible Entities.* The Order adopts a proposal that the Commission permit the assignment or transfer of grandfathered radio station combinations intact to any buyer, not just an eligible entity as currently permitted, provided that such a buyer files an application to assign the excess stations to an eligible entity, or to an irrevocable divestiture trust for purposes of ultimate assignment to an eligible entity, within 12 months after consummation of the purchase of the grandfathered cluster. The Commission agrees with commenting parties that this proposal will promote small business investment in broadcasting by providing additional time and flexibility to raise the capital necessary to purchase the excess stations. In order to ensure that this proposal will not undermine the Commission's local radio ownership rule, the rules will require non-eligible entities seeking to acquire a grandfathered radio station group to file the divestiture trust agreement with its initial application to allow the Commission to evaluate the proposed trust at the outset.

17. *''Access to Capital'' Conference.* The Order also adopts a proposal that the Commission convene an access-to-capital conference. This conference will focus on the investment banking and private equity communities, and the opportunities for small businesses, new entrants, and designated entities to acquire access to financing and thereby facilitate entry to ownership in the communications sector. Moreover, the Commission will seek to facilitate the creation of educational conferences whenever a significant ownership transaction is proposed to the Commission.

18. *Guidebook on Diversity.* The Commission adopts a proposal to create a guidebook on diversity that will focus on what companies can do to promote diversity in ownership and contracting in order to provide the public with more information and guidance on this subject.

C. Other Proposals

19. *Transfers of Grandfathered Station Combinations to SDBs.* The Commission declines to adopt a proposal to permit the licensee of a grandfathered station combination to sell the cluster intact to a socially disadvantaged business (''SDB''). In the 2002 Biennial Review Order, the Commission permitted the sale of grandfathered station combinations to ''eligible entities,'' which were defined as entities that would qualify as a small business consistent with SBA standards for its industry grouping. The Order adopts the same definition for the class of entities that benefit initially from the actions taken in the Order. Should the Commission adopt a definition of SDB at the conclusion of the proceeding initiated by the Third Further Notice accompanying the Order, by operation of the existing rule such SDBs would be permitted to acquire grandfathered combinations.

20. *Structural Rule Waiver for Selling a Station to an SDB; Staged Implementation of Deregulation.* The Commission declines to adopt a ''structural'' waiver of its broadcast ownership rules, under which an applicant selling a station to an SDB would be permitted to complete a transaction that otherwise would be barred by an ownership rule. This proposal is linked to another, which urges the Commission, should it decide to relax its broadcast ownership rules, to implement such deregulation in stages, measuring its impact and adopting ''mid-course corrections'' as needed. A commenter suggests that the confluence of these two proposals would have the effect of permitting an applicant selling a station to an SDB to have its transaction evaluated under the more liberal ownership rules that would take effect later in the staged deregulation process. The Commission states that the short-term benefit of the waiver proposal—an immediate increase in the number of stations owned by SDBs—would likely be offset by the public interest harms resulting from the approval of station combinations that exceed the ownership rules. The Commission states that it has no current plans to implement the type of deregulation envisioned by proponents of a staged approach and finds the proposal to be premature.

21. *Structural Rule Waivers for Creating Incubator Programs.* The Commission declines to adopt a proposal that it waive its broadcast ownership rules to allow an applicant to acquire stations in a market beyond the permissible limit if it establishes and implements an ''incubator'' program designed to promote ownership by disadvantaged businesses. While it appreciates the value that incentives-based programs such as this can have, the Commission is concerned that companies participating in such a program will expend only the barest minimum in financial and other support required to qualify for the waiver. Moreover, the Commission is concerned that, by allowing the incubating party to acquire stations in excess of local ownership caps, the proposal could create a significant potential for undermining its broadcast ownership restrictions.

22. *Opening FM Spectrum for New Entrants.* The Commission declines to take three steps to open FM spectrum for new entrants proposed by a commenter. First, it does not relax the current limit on the filing of contingent applications set forth in § 73.3517(e) of the rules, which provides that the Commission will accept up to four contingent applications filed by FM licensees or permittees for minor modification of facilities. Second, it does not repeal the third adjacent channel requirements found in § 73.215(a) of the rules. Finally, it does not relax its FM service and allotment rules and policies: (1) By replacing the community of license coverage requirement for commercial FM stations, set forth in § 73.315(a) of the rules, with the less stringent coverage requirement for noncommercial FM stations, set forth in § 73.515 of the rules; or (2) by authorizing stations to change their community of license to any community located within the same market, as defined by § 73.3555(a) of the rules.

23. In amending § 73.3517 of the rules to permit the filing of contingent applications, the Commission concludes that a limit of four struck the proper balance between the desire of broadcasters for additional flexibility in proposing coordinated changes and the limited staff resources that are available to review the substantially more complex facilities change applications that the revised rule permits. Commenters have not presented evidence sufficient to persuade the Commission to upset this balance. With respect to the second proposed step, the Commission notes that the third adjacent channel requirements are statutory. The Commission issued a report to Congress in 2004, based on the FCC-commissioned Mitre Study, advising that, because LPFM stations do

not pose a significant risk of causing interference to existing full service FM stations or FM translator and FM booster stations, Congress should eliminate the third adjacent channel protection requirement. The Commission states that it will continue to recommend such legislation. Finally, the Commission concludes that relaxing community of license coverage requirements for commercial FM stations and increasing the ability of radio stations to change their communities of license to any community within the same market will undermine its broadcast regulatory policy of enhancing localism. Such actions would result in the licensing of stations that technically cannot serve their communities of license, a result antithetical to the concept of localism. Furthermore, the Commission notes that it recently declined to abandon its policy against removing the sole local transmission service at a community in order to allow it to become the first local transmission service at another community. It also notes, however, that a commenter revised this last proposal in accordance with a recent recommendation of the federal advisory committee on diversity, and it seeks comment on this revised proposal in the Third Further Notice that accompanies the Order.

24. *Advocacy of Tax Deferral Legislation; Promotion of Minority Ownership in All General Media Rulemaking Proceedings*. The Commission believes it already satisfied a proposal that the Commission recommend to Congress that it reinstate the Commission's authority to adopt the former Tax Certificate Policy. That policy, originally adopted by the Commission in 1978, allowed a seller to defer capital gains taxes on the sale of a media property to a minority-controlled firm. The Commission recommended reinstatement of the necessary statutory authority in its recently adopted Section 257 Triennial Report to Congress. The Commission therefore declines to commit to further action in the Order.

25. The Commission also believes it has satisfied a proposal that the Commission consider, as part of all general media rulemaking proceedings (except for individual FM or TV allotment proceedings), how the proposed rules would impact minority ownership. The Commission's Office of Communications Business Opportunities currently provides outreach services to assist small businesses and new entrants into the communications industry and input on how proposed rules impact minority ownership. The Commission therefore declines to commit to further action in the Order.

26. *Extension of the Community Reinvestment Act*. The Commission declines to adopt a proposal that it work with the Treasury Department to expand application of the Community Reinvestment Act (''CRA'') credit to encourage institutions to place capital in minority-focused private equity funds. The Commission notes that the CRA already encourages debt financing to small broadcasters and, to the extent that the proposal advocates adding a race-based dimension to the CRA, it concludes that judicial precedent constrains the Commission from enacting it.

27. *Establish a ''Fund of Funds.''* The Commission declines to adopt at this time a proposal that it initiate discussions with the major pension funds to encourage the establishment of a special fund to place capital with minority-focused private equity funds. The Commission concludes that it lacks statutory authority to hold such discussions and, while it recognizes that eligible entities, as defined in the Order, have difficulty accessing capital, it has taken action that will help mitigate that difficulty and does not believe that the additional measures proposed are appropriate Commission functions.

28. *Relax Ownership Restrictions*. The Commission declines to adopt a proposal that it relax restrictions on foreign ownership to permit non-controlling foreign investment where such investment would help eliminate a barrier to access to capital for domestic, minority-owned broadcasters. Commenters do not explain why the Commission's concerns about foreign ownership of broadcast interests generally would not apply in this context. At a minimum, the Commission would be required to undertake a significant rulemaking proceeding to examine this issue in greater depth. The Commission is not convinced, on the basis of the record before it, that taking the extraordinary step of relaxing its foreign ownership rules would promote diversification among broadcast licensees, including women and minorities.

29. *Permit AM Stations To Use FM Translators*. The Commission concludes that it is not necessary to take action in the Order to permit AM stations to rebroadcast their signals on FM translator stations. It notes that it already has released a Notice of Proposed Rulemaking to seek comment on such a rule change and expects to issue an order resolving that proceeding soon.

30. *Repeal Radio Subcaps*. The Commission takes no action in the Order on a proposal that it repeal the subcaps on ownership of same-service (AM or FM) stations contained in the local radio ownership rule. It notes that it retains the subcaps as a component of the local radio ownership rule in its Report and Order in the 2006 Quadrennial Review proceeding.

Report and Order

Final Paperwork Reduction Act of 1995 Analysis:

31. This Order contains modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the modified information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will publish a separate **Federal Register** Notice seeking those comments. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Final Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in MB Docket No. 02–277. The Commission sought written public comment on the proposals in the NPRM including comment on the IRFA. The Commission also prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) and a Second Supplemental Initial Regulatory Flexibility Analysis (Second Supplemental IRFA) of the possible significant economic impact on small entities of the proposals in the *Further Notice of Proposed Rulemaking (Further Notice)* and the *Second Further Notice of Proposed Rulemaking (Second Further Notice)*, respectively. The Commission sought written public comment on the *Further Notice*, including comment on the Supplemental IRFA, and written public comment on the *Second Further Notice*, including comment on the Second Supplemental IRFA. This present Final

Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order and Order on Reconsideration (Order)

33. The Order takes several steps to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses, which historically have not been well-represented in the broadcasting industry. The *Order* sets forth the Commission's objectives, defines the entities that will benefit initially from the Commission's actions, and adopts a number of measures modifying certain Commission rules and policies to encourage ownership diversity and new entry in broadcasting.

B. Legal Basis

34. This Order is adopted pursuant to sections 1, 2(a), 4(i), 257, 303, and 307–310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303, and 307–310.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and the Supplemental IRFA

35. The Commission received no comments in direct response to the IRFA, the Supplemental IRFA, or the Second Supplemental IRFA. However, the Commission received comments that discuss issues of interest to small entities. These comments were taken into account during the Commission's decision-making process to adopt certain rule modifications to promote broadcast ownership among new entrants and small businesses, including minority- and women-owned businesses. These rule modifications are summarized in the section of this FRFA discussing the steps taken to minimize a significant impact on small entities, and the significant alternatives considered.

D. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

36. 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 proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under section 3 of the Small Business Act. 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 SBA.

37. Television Broadcasting. In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than $13 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in the United States have revenues of $13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

38. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

39. Radio Broadcasting. The Small Business Administration defines a radio broadcasting entity that has $6.5 million or less in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of December 7, 2007, about 10,500 (95 percent) of 11,050 commercial radio stations in the United States have revenues of $6.5 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

40. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

41. Class A TV, LPTV, and TV translator stations. The rules and policies adopted herein may also apply to licensees of Class A TV stations, low power television (''LPTV'') stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities, since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of

these entities are also likely to have revenues of less than $13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

42. FM Translator Stations and Low Power FM Stations. The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $6.5 million in annual receipts. Currently, there are approximately 5,540 licensed FM translator stations and 262 FM booster stations and 820 licensed LPFM stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

43. International Broadcast Stations. Commission records show that there are approximately 24 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute small businesses under the SBA definition.

44. Daily Newspapers. The SBA has developed a small business size standard for the census category of Newspaper Publishers; that size standard is 500 or fewer employees. Census Bureau data for 2002 show that there were 5,159 firms in this category that operated for the entire year. Of this total, 5,065 firms had employment of 499 or fewer employees, and an additional 42 firms had employment of 500 to 999 employees. Therefore, we estimate that the majority of Newspaper Publishers are small entities that might be affected by our action.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

45. Licensees engaged in the sale of a commercially operated AM, FM, TV, Class A TV, or international broadcast station will be required to certify on Form 314 or 315 that they did not discriminate on the basis of race, color, religion, national origin, or sex in the sale of their station. Broadcasters that are renewing their licenses will have to certify on Form 303–S that their advertising sales contracts do not contain discriminatory clauses.

46. The Commission revised its rules to afford eligible entities that acquire an expiring construction permit additional time to build out the facility (either the time remaining on the original construction permit or 18 months, whichever is greater). To obtain this benefit, eligible entities will have to demonstrate that they meet the eligibility criteria. In addition, the Commission relaxed its equity/debt plus attribution standard for interest holders in eligible entities in order to encourage investment in smaller companies. For both these rule changes, there will be revisions to application forms or the forms' instructions.

F. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

47. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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 or reporting requirements under the rule for 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 small entities.

48. The Commission's intent in adopting the rule modifications in the Order was to expand broadcast ownership opportunities for new entrants and small businesses, including minority- and women-owned businesses. Therefore, it is anticipated that the adopted rule changes will benefit small businesses, not burden them. Although the Commission adopted numerous proposals to benefit small businesses, it declined to adopt certain other proposals after considering the various ramifications involved. The Order describes in detail the Commission's reasoning for each proposal adopted or declined.

49. To promote and expand media ownership diversity, the Commission: (1) Changed the construction permit deadlines to allow eligible entities that acquire expiring construction permits additional time to build out the facility; (2) revised the equity/debt plus attribution standard to facilitate investment in eligible entities; (3) modified the distress sale policy to allow certain licensees—those whose license has been designated for a revocation hearing or whose renewal application has been designated for a hearing on basic qualifications issues—to sell the station to an eligible entity prior to the commencement of the hearing; (4) adopted an Equal Transactional Opportunity rule that bars race or gender discrimination in broadcast transactions; (5) adopted a ''zero-tolerance'' policy for ownership fraud and agreed to ''fast-track'' ownership-fraud claims; (6) required broadcasters renewing their licenses to certify that their advertising sales contracts do not discriminate on the basis of race or gender; (7) resolved to conduct annual longitudinal studies of minority and female ownership after the Commission improves its data gathering process; (8) encouraged local and regional banks to participate in SBA-guaranteed loan programs in order to facilitate broadcast and telecommunications-related transactions; (9) adopted modifications to give priority to any entity financing or incubating an eligible entity in certain duopoly situations; (10) permitted the consideration of requests to extend divestiture deadlines in mergers in which applicants have actively solicited bids for divested properties from eligible entities; (11) revised the exception to the prohibition on the assignment or transfer of grandfathered radio station combinations; (12) agreed to convene an access-to-capital conference; and (13) decided to create a guidebook on increasing diversity in the media and telecom industries.

Congressional Review Act

50. The Commission will send a copy of this Order, including this FRFA, in a report to Congress and the Government Accountability Office, pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

51. Accordingly, *it is ordered*, that pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303(r), and 307–310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), and 307–310, this *Report and Order is adopted*.

52. *It is further ordered*, that pursuant to the authority contained in sections 1, 2(a), 4(i), 257, 303(r), and 307–310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), and 307–310, the Commission's rules *are hereby amended* as set forth in Appendix A.

53. *It is further ordered*, that the rule amendments adopted herein *will become effective* July 15, 2008. Changes to FCC Forms required as the result of the rule amendments adopted herein *will become effective* 30 days after the Commission publishes a notice in the **Federal Register** announcing approval by the Office of Management and Budget of the forms.

54. *It is further ordered*, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

55. *It is further ordered*, that the Commission *shall send* a copy of this Report and Order and Third Further Notice of Proposed Rulemaking in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

56. *It is further ordered*, that pursuant to the authority contained in sections 1, 2(a), 4(i, j), 257, 303(r), 307–10, and 614–15 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i, j), 257, 303(r), 307–10, 534–35, this *Third Further Notice of Proposed Rule Making is adopted*.

57. *It is further ordered*, that pursuant to the authority contained in sections 1, 2(a), 4(i, j), 257, 303(r), 307–10, 336, and 614–15 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i, j), 257, 303(r), 307–310, 336, 534–35, *notice is hereby given* of the proposals described in this *Third Further Notice of Proposed Rule Making*.

58. *It is further ordered*, that the Petition for Rulemaking of Entravision Holdings, LLC, RM–9567, *is granted in part*.

59. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Third Further Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Section 73.2090 is added to read as follows:

§ 73.2090 Ban on discrimination in broadcast transactions.

No qualified person or entity shall be discriminated against on the basis of race, color, religion, national origin or sex in the sale of commercially operated AM, FM, TV, Class A TV or international broadcast stations (as defined in this part).

■ 3. Section 73.3555 is amended by revising paragraph i. to ''Note 2'', § 73.3555 to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

i. Notwithstanding paragraphs e. and f. of this note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules (''interest holder'') shall have that interest attributed if:

1. Where the entity in which the interest is held is not an eligible entity, the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet, or where the entity in which the interest is held is an eligible entity, the combined equity and debt of the interest holder in the eligible entity is less than 50 percent or the total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity; and

2. i. The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this note other than this paragraph i.; or

ii. The interest holder supplies over 15 percent of the total weekly broadcast programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, ''market,'' will be defined as it is defined under the specific multiple or cross-ownership rule that is being applied, except that for television stations, the term ''market,'' will be defined by reference to the definition contained in the local television multiple ownership rule contained in paragraph (b) of this section.

iii. For purposes of paragraph i. 1. of this note, an ''eligible entity'' shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121 through 201, at the time the transaction is approved by the FCC, and holds.

A. 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

B. 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

C. More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

■ 4. Section 73.3598 is amended by revising paragraph (a) to read as follows:

§ 73.3598 Period of construction.

(a) Except as provided in the last two sentences of this paragraph, each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Except as provided in the last two sentences of this paragraph, each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed. A LPFM permittee unable to complete construction within the time frame specified in the original construction permit may apply for an eighteen month extension upon a showing of good cause. The LPFM

permittee must file for an extension on or before the expiration of the construction deadline specified in the original construction permit. An eligible entity that acquires an issued and outstanding construction permit for a station in any of the services listed in this paragraph shall have the time remaining on the construction permit or eighteen months from the consummation of the assignment or transfer of control, whichever is longer, within which to complete construction and file an application for license. For purposes of the preceding sentence, an ''eligible entity'' shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121 through 201, at the time the transaction is approved by the FCC, and holds

(1) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will hold the construction permit; or

(2) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will hold the construction permit, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

(3) More than 50 percent of the voting power of the corporation that will hold the construction permit if such corporation is a publicly traded company.

* * * * *

■ 5. Section 73.5008 is amended by revising paragraph (c) to read as follows:

§ 73.5008 Definitions applicable for designated entity provisions.

* * * * *

(c) An attributable interest in a winning bidder or in a medium of mass communications shall be determined in accordance with § 73.3555 and Note 2. In addition, the attributable mass media interests, if any, held by an individual or entity with an equity and/or debt interest(s) in a winning bidder shall be attributed to that winning bidder for purposes of determining its eligibility for the new entrant bidding credit, if the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus all debt) of the winning bidder, or where the winning bidder is an eligible entity, the combined equity and debt of the interest holder in the winning bidder is less than 50 percent or the total debt of the interest holder in the winning bidder does not exceed 80 percent of the asset value of the winning bidder and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the winning bidder or any related entity. For purposes of the preceding sentence, an ''eligible entity'' shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121 through 201, at the time the transaction is approved by the FCC, and holds

(1) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

(2) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

(3) More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

[FR Doc. E8–11039 Filed 5–15–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 565

[Docket No. NHTSA 2008–0022]

RIN 2127–AJ99

Vehicle Identification Number Requirements; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: NHTSA published in the **Federal Register** of April 30, 2008, a final rule making certain changes in the 17-character vehicle identification number (VIN) system so that the system will remain viable for at least another 30 years. The regulatory text of the final rule contained several typographical errors, which this document corrects. In addition, this document makes clear that all motor vehicles identified by their manufacturer as model year (MY) 2009 or earlier vehicles must comply with the current Part 565 VIN requirements (which are set forth in subpart C of Part 565 of the final rule).

DATES: *Effective Date:* May 16, 2008.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues*, you may contact Mr. Kenneth O. Hardie, Office of Crash Avoidance Standards (NVS–120), NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–6987) (FAX: 202–366–7002).

For legal issues, you may contact Ms. Deirdre Fujita, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202–366–2992) (FAX: 202–366–3820).

SUPPLEMENTARY INFORMATION: NHTSA published a final rule in the **Federal Register** of April 30, 2008, (73 FR 23367; NHTSA Docket 2008–0022) that made certain changes in the 17-character vehicle identification number (VIN) system so that there will be a sufficient number of unique manufacturer identifiers and VINs to use for at least another 30 years.[1] The regulatory text of the final rule contained several typographical errors which this document corrects. In addition, this document makes clear that all motor vehicles identified by their manufacturer as model year (MY) 2009 or earlier vehicles must comply with the current Part 565 VIN requirements (which are set forth in subpart C of Part 565 of the final rule).[2]

Correction of Publication

■ In rule FR Doc. 08–1197 published on April 30, 2008, (73 FR 23367), make the following corrections.

■ 1. On page 23379, in the second column, § 565.2 is correctly revised to read as follows:

[1] The bulk of the changes in 49 CFR Part 565 applied to passenger cars and multipurpose passenger vehicles and trucks with a gross vehicle weight rating of 4536 kilograms (10,000 pounds) or less. There were relatively few changes to the regulation that impact the manufacturers of other vehicles. However, NHTSA urges all manufacturers to read the new regulation carefully to determine the specific changes that apply to them, such as the new requirement that the vehicle make now be communicated in and decipherable from the second section of the VIN as opposed to the first section of the VIN as previously required.

[2] In the **Federal Register** document at page 23376, middle column under the heading ''Agency Analysis and Response'' (which related to ''14. Effective Date of the Rule'') there is a discussion relating to the effective date that focuses on the letters ''A'' and ''B'' in the 10th VIN position. The entire thrust of that discussion was intended to make clear that the application of the new regulation begins with the 2010 model year. However, while the agency intended that the application of the old regulation was to end with the completion of the 2009 model year, this application was not clearly stated. This correction addresses the lack of clarity in establishing the end of the old regulation.

§ 565.2 Application.

(a)(1) Except as provided in paragraph (a)(2) of this section, Subpart B of this part 565 applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers (including trailer kits), incomplete vehicles, low speed vehicles, and motorcycles manufactured on or after October 27, 2008 whose VINs have a letter ''A'' or ''B'' in the 10th position, and to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers (including trailer kits), incomplete vehicles, low speed vehicles, and motorcycles manufactured on or after April 30, 2009. Vehicles imported into the United States under 49 CFR 591.5(f), other than by the corporation responsible for the assembly of that vehicle or a subsidiary of such a corporation, are excluded from requirements of § 565.13(b), § 565.13(c), § 565.13(g), § 565.13(h), § 565.14 and § 565.15.

(2) All motor vehicles identified as model year 2009 or earlier vehicles by their manufacturer must comply with Subpart C of this part 565.

(b) Subpart B of this part 565 applies to vehicles manufactured on or after April 30, 2008 and before April 30, 2009, whose vehicle identification number (VIN) does not have a letter ''A'' or ''B'' in the 10th position of the VIN and that are not identified as model year 2009 or earlier vehicles by their manufacturer.

§ 565.11 [Corrected]

■ 2. On page 23379, in the second column, in § 565.11, ''572'' in the first sentence of the paragraph is corrected to read ''565,'' and the phrase ''that are not identified by their manufacturer as model year 2009 or earlier vehicles'' is added to the end of the second sentence. In the third column of the same page, in § 565.11, ''591.14(f)'' is corrected to read ''591.5(f).''

§ 565.21 [Corrected]

■ 3. On page 23383, in the first column, in § 565.21, ''572'' in the first sentence of the paragraph is corrected to read ''565.'' In the third sentence, ''591.24(f)'' is corrected to read ''591.5(f).''

Issued: May 8, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–10831 Filed 5–15–08; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 73, No. 96
Friday, May 16, 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

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2007–0144]

RIN 0579–AC76

Importation of Baby Squash and Baby Courgettes From Zambia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation into the continental United States of baby squash and baby courgettes from Zambia. As a condition of entry, both commodities would have to be produced in accordance with a systems approach that would include requirements for pest exclusion at the production site, fruit fly trapping inside and outside the production site, and pest-excluding packinghouse procedures. Both commodities would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the baby squash or baby courgettes have been produced in accordance with the proposed requirements. This action would allow for the importation of baby squash and baby courgettes from Zambia into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before July 15, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0144* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0144, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0144.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence, Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–47, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Zambia has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow baby squash and baby courgettes from Zambia to be imported into the United States. As part of our evaluation of Zambia's request, we prepared a pest risk assessment (PRA) and a risk management document. Copies of the PRA and the risk management document may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

The PRA, titled ''Importation of Baby Squash, *Cucurbita maxima* Duchesne, and Baby Courgettes, *C. pepo* L., from Zambia into the Continental United States'' (November 2007), evaluates the risks associated with the importation of baby squash and baby courgettes into the continental United States (the lower 48 States and Alaska) from Zambia. The terms baby squash and baby courgettes refer to immature squash and courgettes for consumption that are 20 to 25 millimeters (0.79 to 0.98 inches) in diameter and 90 to 100 millimeters (3.54 to 3.94 inches) long.

The PRA and supporting documents identified 10 pests of quarantine significance present in Zambia that could be introduced into the United States through the importation of baby squash or baby courgettes. These include three moths, *Diaphania indica, Helicoverpa armigera*, and *Spodoptera littoralis*, and a scale, *Aulacaspis tubercularis*. The remaining six quarantine pests are fruit flies: *Dacus bivitattus, D. ciliatus, D. frontalis, D. lounsburyii, D. punctatifrons*, and *D. vertebratus*.

APHIS has determined that measures beyond standard port-of-entry inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of baby squash and baby courgettes from Zambia into the continental United States only if they are produced in accordance with a systems approach. The systems approach would require the baby squash and baby courgettes to be grown in approved greenhouses designed to exclude all 10 quarantine pests, would require trapping inside and outside the greenhouse for the 6 *Dacus* spp. fruit flies, and would require packinghouse procedures designed to exclude all 10 quarantine pests. Only commercial consignments of baby squash and baby courgettes would be allowed to be imported from Zambia. Consignments of baby squash or baby courgettes from Zambia would also be required to be accompanied by a phytosanitary certificate with an additional declaration stating that the baby squash or baby courgettes had been produced in accordance with the proposed requirements.

The mitigation measures in the proposed systems approach are discussed in greater detail below.

Approved Greenhouses

Baby squash and baby courgettes would have to be grown in Zambia in insect-proof, pest-free greenhouses approved jointly by the Zambian NPPO and APHIS. The greenhouses would have to be equipped with double self-closing doors, to prevent inadvertent introduction of pests into the greenhouses. In addition, any vents or openings in the greenhouses (other than the double self-closing doors) would have to be covered with 1.6 mm screening in order to prevent the entry of pests into the greenhouse. The 1.6 mm screening size is adequate to exclude all 10 quarantine pests of concern, as all of these pests are relatively large.

We would require the greenhouses to be inspected periodically by the Zambian NPPO or its approved designee to ensure that sanitary procedures are employed to exclude plant pests and diseases and to verify that the screening is intact. (An approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.)

The greenhouses would also have to be inspected monthly for the 10 quarantine pests of concern by the Zambian NPPO or its approved designee, beginning 2 months before harvest and continuing for the duration of the harvest. APHIS would have to be allowed to monitor or inspect the greenhouses during this period as well. If, during these inspections, any of the quarantine pests was found inside the greenhouse, the Zambian NPPO would immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition would remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

Trapping for Dacus spp. Fruit Flies

Trapping for *Dacus bivitattus, D. ciliatus, D. frontalis, D. lounsburyii, D. punctatifrons*, and *D. vertebratus* (referred to below, collectively, as *Dacus* spp. fruit flies) would be required both inside and outside the greenhouse. Trapping would have to be conducted beginning 2 months before harvest and continue for the duration of the harvest.

Inside the greenhouses, approved fruit fly traps with an approved protein bait would have to be placed inside the greenhouses at a density of four traps per hectare, with a minimum of at least two traps per greenhouse. The traps would have to be serviced at least once every 7 days. If a *Dacus* spp. fruit fly was found in a trap inside the greenhouse, the Zambian NPPO would immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition would remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

Outside the greenhouse, approved fruit fly traps with an approved protein bait would have to be placed inside a buffer area 500 meters wide around the greenhouse at a density of 1 trap per 10 hectares, with a total of at least 10 traps. At least one of these traps would have to be placed near the greenhouse. These traps would have to be serviced at least once every 7 days.

In order to reduce the pest pressure of *Dacus* spp. fruit flies outside the greenhouse, no shade trees would be permitted within 10 meters of the entry door of the greenhouse, and no fruit fly host plants would be permitted within 50 meters of the entry door of the greenhouse. In addition, while trapping is being conducted, no fruit fly host material (such as fruit) would be allowed to be brought into the greenhouse or to be discarded within 50 meters of the entry door of the greenhouse. Ground applications of an approved protein bait spray for the *Dacus* spp. fruit flies would have to be used on all shade trees and host plants within 200 meters surrounding the greenhouse every 6 to 10 days starting at least 30 days before and during harvest.

Dacus spp. fruit fly prevalence levels lower than 0.7 flies per trap per week (F/T/W) would have to be maintained outside the greenhouse for the duration of the trapping. If the F/T/W was 0.7 or greater outside the greenhouse, the Zambian NPPO would immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition would remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

To ensure that the trapping is being properly conducted, the Zambian NPPO or its approved designee would have to maintain records of trap placement, trap servicing, and any *Dacus* spp. captures. The Zambian NPPO would also have to maintain an APHIS-approved quality control program to audit the trapping program. APHIS would have to be given access to review 1 year's worth of trapping data for any approved greenhouse upon request.

Packinghouse Procedures

Baby squash and baby courgettes would have to be packed within 24 hours of harvest in a pest-exclusionary packinghouse. No shade trees would be permitted within 10 meters of the entry door of the packinghouse, and no fruit fly host plants would be permitted within 50 meters of the entry door of the packinghouse. In addition, during packing, no fruit fly host material other than the baby squash and baby courgettes would be allowed to be brought into the packinghouse, and no fruit fly host material would be allowed to be discarded within 50 meters of the entry door of the packinghouse. The baby squash or baby courgettes would have to be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The baby squash or baby courgettes would have to be packed in insect-proof cartons for shipment to the United States. These cartons would also have to be labeled with the identity of the greenhouse, to facilitate traceback if necessary. While packing the baby squash or baby courgettes for export to the United States, the packinghouse would only be allowed to accept baby squash and baby courgettes from approved greenhouses. These safeguards would have to remain intact until the arrival of the baby squash or baby courgettes in the United States. If the safeguards do not remain intact, the consignment would not be allowed to enter the United States. These safeguards would prevent baby squash and baby courgettes from being infested with plant pests in the interval between their departure from the approved greenhouses and their arrival in the United States.

Commercial Consignments

Only commercial consignments of baby squash and baby courgettes from Zambia would be allowed to be imported into the United States. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of

indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Phytosanitary Certificate and Labeling

To reflect our proposed addition to the fruits and vegetables regulations of baby squash and baby courgettes from Zambia, we are proposing to add a new § 319.56–48 governing the conditions of entry of baby squash and baby courgettes from Zambia into the continental United States. To certify that the baby squash and baby courgettes have been produced in accordance with the requirements we are proposing, we would require that each consignment of baby squash or baby courgettes be accompanied by a phytosanitary certificate of inspection issued by the Zambian NPPO with an additional declaration stating that the baby squash or baby courgettes were produced in accordance with § 319.56–48.

Executive Order 12866 and Regulatory Flexibility Act

This proposed 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.

This analysis examines potential impacts for U.S. small entities from the proposed importation of baby squash and baby courgettes (zucchini) from Zambia into the United States. The analysis is set forth in terms of squash generally. As background, we provide a brief overview of squash production and trade by the United States. This is followed with an estimate of price and welfare effects of the rule based on assumed levels of squash imports from Zambia. Finally, we describe the expected impact on small entities.

U.S. Squash Production and Trade

The United States is a major squash producer and importer.[1] The United States produced 430,100 metric tons (MT) of squash valued at $229 million in 2006, while imports that year totaled 240,590 MT. Squash production occurs in many States. However, the top ten States (Georgia, Florida, California, New York, Michigan, Ohio, Texas, North Carolina, Oregon, and New Jersey) accounted for 98 percent of total cash receipts in 2006.[2]

As shown in table 1, U.S. squash production increased from 398,800 MT in 2002 to 430,100 MT in 2006, an annual growth rate of about 1.6 percent. Similarly, consumption increased from 605,970 MT to 665,730 MT. During the same period, U.S. squash imports increased from 210,930 MT in 2002 to 240,590 MT in 2006. Mexico accounted by far for the largest share of U.S. imports (95.6 percent), followed distantly by Costa Rica (1.6 percent), and Canada (1.1 percent). Other minor suppliers include Honduras, Panama, New Zealand, Guatemala, and Nicaragua. The United States was a net importer throughout this period, with average annual imports (over 234,000 MT) dwarfing exports (less than 4,300 MT). Imports from Zambia would be small compared to an already large import base.[3]

TABLE 1.—U.S. SQUASH PRODUCTION, CONSUMPTION, PRICE, EXPORTS AND IMPORTS, 2002–2006

Year	Production (MT)	Consumption (MT)	Price per MT	Exports in MT	Imports in MT
2002	398,800	605,970	$882	3,770	210,930
2003	365,650	602,880	1,047	3,810	241,040
2004	401,330	637,650	992	4,090	240,410
2005	378,030	611,090	1,047	4,820	237,880
2006	430,100	665,730	1,157	4,960	240,590
5-year average (2002–2006)	394,780	624,670	1,025	4,290	234,170

Sources: USDA/NASS, Vegetables 2006 Summary, January 2007; wholesale prices are from USDA/NASS, Fresh market vegetables prices and yield data, 2002–2006; trade data are from USDA/Foreign Agricultural Service, The Global Trade Atlas: Global Trade Information Services, Inc., Country Edition, August 2007.

Impact of Potential Fresh Squash Imports

We estimate the impact of baby squash and baby courgettes imports from Zambia on U.S. production, consumption, and prices using a net trade welfare model. The data used were obtained from the Foreign Agricultural Service (FAS); The Global Trade Atlas: Global Trade Information Services, Inc., Country Edition, August 2007; and United Nations' Food and Agriculture Organization FAOstat data (*http://faostat.fao.org*). The demand and supply elasticities used are –0.66 and 0.12, respectively.[4]

Our analysis is in terms of the overall squash industry of the United States. If data were available that would allow us to estimate the impact of the proposed rule only in terms of the markets for baby squash and baby courgettes, we would expect the effects to be somewhat larger than those reported here, but still insignificant.

We model three levels of squash exports to the United States from Zambia: (1) 260 MT, average annual global exports of squash by Zambia (2004–2006); (2) 400 MT, the amount of squash that the Government of Zambia has projected would be exported to the United States; and (3) 1,000 MT, a quantity that is 2two-and-a-half times

[1] Squash can be classified depending on whether it is harvested as immature fruit (summer squash) or mature fruit (winter squash). Summer squash, such as zucchini (also known as courgette), pattypan, and yellow crookneck are harvested and consumed during the growing season, while the skin is still tender and the fruit relatively small. Winter squash such as butternut, hubbard, buttercup, ambercup, acorn, spaghetti squash, and pumpkin are harvested at maturity, generally the end of summer, cured to further harden the skin, and stored in a cool place for eating later. They generally require longer cooking time than summer squash.

[2] USDA/National Agricultural Statistics Service (NASS), Vegetables 2006 Summary, January 2007.

[3] Reliable production data are not available for Zambia. Squash exported to the United States are to be grown in insect-proof, pest-free greenhouses at approved production sites. These sites are in the process of being constructed. The Zambian Government expects to export around 400 MT of fresh squash to the United States annually. It is not clear whether some additional amount would be produced for export to other countries.

[4] Jaime E. Malaga, Gary W. Williams, and Stephen W. Fuller, ''U.S.-Mexico fresh vegetable trade: The effects of trade liberalization and economic growth,'' *Agricultural Economics*, Vol. 26 (October 2001): 45–55.

Zambia's projected exports to the United States.

Table 2 presents the changes that we estimate would result from the proposed rule. These include annual changes in U.S. consumption, production, wholesale price, consumer welfare, producer welfare, and net welfare. The medium level of assumed squash exports to the United States of 400 MT (as projected by the Government of Zambia) would result in a decline of $0.89 per MT in the wholesale price of squash and a fall in U.S. production of 41 MT. Consumption would increase by 359 MT. Producer welfare would decline by $347,180 and consumer welfare would increase by $558,240, yielding an annual net benefit of about $211,060. Other results are as shown in table 2 below.

TABLE 2.—ESTIMATED IMPACT OF SQUASH IMPORTS FROM ZAMBIA ON THE UNITED STATES ECONOMY FOR THREE IMPORT SCENARIOS

Assumed annual squash imports, MT	[1] 260	[2] 400	[3] 1,000
Change in U.S. consumption, MT	234	359	898
Change in U.S. production, MT	−26	−41	−102
Change in wholesale price of squash, dollars per MT	−$0.58	−$0.89	−$2.22
Change in consumer welfare	$362,820	$558,240	$1,396,210
Change in producer welfare	−$225,670	−$347,180	−$867,890
Annual net benefit	$137,150	$211,060	$528,330

Note: The baseline data used are 5-year annual averages for production, consumption, prices, exports and imports, as reported in the last row of table 1. The demand and supply elasticities used are −0.66 and 0.12, respectively (Jaime E. Malaga, Gary W. Williams, and Stephen W. Fuller, "U.S.-Mexico fresh vegetable trade: the effects of trade liberalization and economic growth," *Agricultural Economics*, Vol. 26 (October 2001): 45–55).

[1] Three-year (2004 to 2006) average total squash exports by Zambia.

[2] Annual exports of fresh baby squash and baby courgettes to the United States, as projected by the Government of Zambia.

[3] Two-and-a-half times the projected level of exports of baby squash and baby courgettes by Zambia to the United States.

In all three scenarios, consumer welfare gains would outweigh producer welfare losses. Even in the third scenario, in which we assume imports would total two-and-a-half times the level projected by the Government of Zambia, the decline in producer welfare would represent only about two-tenths of 1 percent of cash receipts received from the sale of domestic squash products. The price decline in this third scenario also would be only about two-tenths of 1 percent. Thus, our analysis indicates that U.S. entities would be unlikely to be significantly affected by this proposed rule.

Impact on Small Entities

The Small Business Administration (SBA) has established guidelines for determining which types of firms are considered to be small entities under the Regulatory Flexibility Act. This proposal could affect U.S. producers of fresh vegetables (North American Industry Classification System 111219) and some importers of fresh squash. Vegetable-producing establishments are classified as small if their annual receipts are not more than $750,000.[5] According to the 2002 Census of Agriculture, there were 11,035 squash operations with production valued at $288 million. These facilities are considered to be small if their annual receipts are not more than $750,000. Over 98.6 percent of these operations (10,883) are considered to be small while the rest (152) are considered large. Based on share of acreage (nearly 60 percent of the total), the small operations had combined annual cash receipts of about $168 million and an average income of about $15,500, while the large operations had combined sales of about $120 million with an average income of about $787,900. As shown in table 3, the impact of potential squash imports on U.S. producers as a result of this rule would be small. The decrease in producer welfare per small entity is less than $47 or about 0.30 percent of average annual sales of small entities, when we assume 1,000 MT of squash are exported to the United States from Zambia (two-and-a-half times Zambia's projected annual exports).

TABLE 3.—ECONOMIC IMPACT OF POTENTIAL SQUASH IMPORTS FROM ZAMBIA ON U.S. SMALL ENTITIES, ASSUMING ANNUAL EXPORTS OF 1,000 MT TO THE UNITED STATES, 2006 DOLLARS

Total decline in producer welfare [1]	−$867,890.
Decrease in welfare incurred by small entities [2]	−$506,850.
Average decrease per acre, small entities [3]	−$12.18.
Average decrease per small entity [4]	−$46.50.
Average decrease as percentage of average sales, small entities [5]	−0.30 percent.

[1] From table 2.

[2] Change in producer welfare multiplied by 58.4 percent, the percentage of total acreage planted by producers with annual revenues of not more than $750,000, that is, small entities. We assume that the change in producer welfare would be proportional to acreage share.

[3] Decrease in producer welfare for small entities divided by 41,619, the number of acres planted by small entities.

[4] Average decrease per acre multiplied by 3.82, the average number of acres per small entity.

[5] Average decrease per small entity divided by $15,500, the average annual revenue per small entity.

Again, table 3 considers a level of importation that is 2½ times the projected imports of baby squash and baby courgettes; at expected levels of importation, the expected economic impacts would be even smaller. In addition, this analysis assumes that gains to Zambian exporters do not come at the expense of any exporting countries; if any displacement occurs, the impact of the proposed rule would be reduced further.

[5] SBA, Small business size standards matched to the North American Industry Classification System 2002, effective October, 2007 (*http://www.sba.gov/size/sizetable2002.html*).

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

Executive Order 12988

This proposed rule would allow baby squash and baby courgettes to be imported into the United States from Zambia. If this proposed rule is adopted, State and local laws and regulations regarding baby squash and baby courgettes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh baby squash and baby courgettes are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2007–0144. Please send a copy of your comments to: (1) Docket No. APHIS–2007–0144, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to allow the importation from Zambia of baby squash and baby courgettes that have been produced subject to a systems approach. Baby squash and baby courgettes imported subject to this systems approach would be required to be accompanied by a phytosanitary certificate stating that they were produced in accordance with the proposed regulations. Under the systems approach, records of fruit fly trapping would have to be maintained, and boxes of fruit would have to be labeled with the greenhouse from which they originated.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.2244 hours per response.

Respondents: Importers.

Estimated annual number of respondents: 17.

Estimated annual number of responses per respondent: 14.4118.

Estimated annual number of responses: 245.

Estimated total annual burden on respondents: 55 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

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 propose to amend 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. A new § 319.56–48 is added to read as follows:

§ 319.56–48 Conditions governing the entry of baby squash and baby courgettes from Zambia.

Baby squash (*Curcurbita maxima* Duchesne) and baby courgettes (*C. pepo.* L.) measuring 10 to 25 millimeters (0.39 to 0.98 inches) in diameter and 60 to 105 millimeters (2.36 to 4.13 inches) in length may be imported into the continental United States from Zambia only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Aulacaspis tubercularis, Dacus bivitattus, Dacus ciliatus, Dacus frontalis, Dacus lounsburyii, Dacus punctatifrons, Dacus vertebratus, Diaphania indica, Helicoverpa armigera*, and *Spodoptera littoralis.*

(a) *Approved greenhouses.* The baby squash and baby courgettes must be grown in Zambia in insect-proof, pest-free greenhouses approved jointly by the Zambian national plant protection organization (NPPO) and APHIS.

(1) The greenhouses must be equipped with double self-closing doors.

(2) Any vents or openings in the greenhouses (other than the double self-closing doors) must be covered with 1.6 mm screening in order to prevent the entry of pests into the greenhouse.

(3) The greenhouses must be inspected periodically by the Zambian NPPO or its approved designee to ensure that sanitary procedures are employed to exclude plant pests and diseases and to verify that the screening is intact.

(4) The greenhouses also must be inspected monthly for the quarantine pests listed in the introductory text of this section by the Zambian NPPO or its approved designee, beginning 2 months before harvest and continuing for the duration of the harvest. APHIS must be allowed to inspect or monitor the

greenhouses during this period as well. If, during these inspections, any of the quarantine pests listed in the introductory text of this section is found inside the greenhouse, the Zambian NPPO will immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition will remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

(b) *Trapping for Dacus spp. fruit flies*. Trapping for *Dacus bivitattus, Dacus ciliatus, Dacus frontalis, Dacus lounsburyii, Dacus punctatifrons*, and *Dacus vertebratus* (referred to in paragraph (b) of this section, collectively, as *Dacus* spp. fruit flies) is required both inside and outside the greenhouse. Trapping must be conducted beginning 2 months before harvest and continue for the duration of the harvest.

(1) *Inside the greenhouse*. Approved fruit fly traps with an approved protein bait must be placed inside the greenhouses at a density of four traps per hectare, with a minimum of at least two traps per greenhouse. The traps must be serviced at least once every 7 days. If a *Dacus* spp. fruit fly is found in a trap inside the greenhouse, the Zambian NPPO will immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition will remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

(2) *Outside the greenhouse*. (i) Approved fruit fly traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the greenhouse at a density of 1 trap per 10 hectares, with a total of at least 10 traps. At least one of these traps must be placed near the greenhouse. These traps must be serviced at least once every 7 days.

(ii) No shade trees are permitted within 10 meters of the entry door of the greenhouse, and no fruit fly host plants are permitted within 50 meters of the entry door of the greenhouse. While trapping is being conducted, no fruit fly host material (such as fruit) may be brought into the greenhouse or be discarded within 50 meters of the entry door of the greenhouse. Ground applications of an approved protein bait spray for the *Dacus* spp. fruit flies must be used on all shade trees and host plants within 200 meters surrounding the greenhouse every 6 to 10 days starting at least 30 days before and during harvest.

(iii) *Dacus* spp. fruit fly prevalence levels lower than 0.7 flies per trap per week (F/T/W) must be maintained outside the greenhouse for the duration of the trapping. If the F/T/W is 0.7 or greater outside the greenhouse, the Zambian NPPO will immediately prohibit that greenhouse from exporting baby squash or baby courgettes to the United States and notify APHIS of the action. The prohibition will remain in effect until the Zambian NPPO and APHIS agree that the risk has been mitigated.

(3) *Records and monitoring*. The Zambian NPPO or its approved designee must maintain records of trap placement, trap servicing, and any *Dacus* spp. captures. The Zambian NPPO must maintain an APHIS-approved quality control program to audit the trapping program. APHIS must be given access to review 1 year's worth of trapping data for any approved greenhouse upon request.

(c) *Packinghouse procedures*. Baby squash and baby courgettes must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. No shade trees are permitted within 10 meters of the entry door of the packinghouse, and no fruit fly host plants are permitted within 50 meters of the entry door of the packinghouse. In addition, during packing, no fruit fly host material other than the baby squash and baby courgettes may be brought into the packinghouse, and no fruit fly host material may be discarded within 50 meters of the entry door of the packinghouse. The baby squash or baby courgettes must be safeguarded by a pest-proof screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The baby squash or baby courgettes must be packed in insect-proof cartons for shipment to the United States. These cartons must be labeled with the identity of the greenhouse. While packing the baby squash or baby courgettes for export to the United States, the packinghouse may only accept baby squash or baby courgettes from approved greenhouses. These safeguards must remain intact until the arrival of the baby squash or baby courgettes in the United States. If the safeguards do not remain intact, the consignment will not be allowed to enter the United States.

(d) *Commercial consignments*. Baby squash and baby courgettes from Zambia may be imported in commercial consignments only.

(e) *Phytosanitary certificate*. Each consignment of baby squash and baby courgettes must be accompanied by a phytosanitary certificate of inspection issued by the Zambian NPPO with an additional declaration reading as follows: ''These baby squash or baby courgettes were produced in accordance with 7 CFR 319.56–48.''

Done in Washington, DC, this 7th day of May 2008.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–10920 Filed 5–15–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2008–0017]

RIN 0579–AC77

Importation of Tomatoes From Souss-Massa, Morocco

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the importation of commercial consignments of tomatoes from the Souss-Massa region of Morocco subject to a systems approach similar to that which is already in place for tomatoes imported into the United States from other areas of Morocco. The tomatoes would have to be produced under conditions that would include requirements for pest exclusion at the production site, fruit fly trapping inside the production site, and pest-exclusionary packinghouse procedures. The tomatoes would also be required to be accompanied by a phytosanitary certificate issued by the Moroccan national plant protection organization with an additional declaration stating that the tomatoes have been grown in registered greenhouses in the Souss-Massa region and were 60 percent or less pink at the time of packing. This action would allow for the importation of commercial consignments of tomatoes from the Souss-Massa region of Morocco into the United States while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before July 15, 2008.

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

Federal eRulemaking Portal: Go to *http://www.regulations.gov/fdmspublic/component/*

main?main=DocketDetail&d=APHIS-2008-0017 to submit or view comments and to view supporting and related materials available electronically.

Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS–2008–0017, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0017.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Porsche, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–8758.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–47, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

Currently, the regulations in § 319.56–28(c) authorize the importation of pink tomatoes from the provinces of El Jadida and Safi in Morocco and the province of Dahkla in Western Sahara into the United States subject to a systems approach. This systems approach requires tomato production in an area of low prevalence and production in a pest-free growing structure to mitigate Mediterranean fruit fly (Medfly, *Ceratitis capitata*).

The Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF), has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow tomatoes (*Lycopersicon esculentum* L.) to be imported from the Souss-Massa region of Morocco into the United States. As part of our evaluation of Morocco's request, we prepared a commodity import evaluation document (CIED). Copies of the CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instruction for accessing Regulations.gov).

We prepared a CIED for this action rather than a pest risk analysis because the pest risks associated with importing tomatoes from other regions of Morocco have been previously determined through the pest risk analysis prepared to support the rulemaking that led to the establishment of the existing systems approach referred to above under which tomatoes may be imported from elsewhere in Morocco and Western Sahara. We expect that a comparable systems approach can be used successfully for the proposed production area in Souss-Massa; however, because the Souss-Massa region is not a low prevalence area for Medfly, we have determined that additional measures would be necessary to mitigate the risks posed by the Medfly. Therefore, the systems approach we would use for tomatoes from the Souss-Massa region would include requirements regarding the absence or treatment of shade trees within a specified distance of greenhouses and packinghouses and an increased the number of traps per hectare within the greenhouses.

As is currently in place for tomatoes from El Jadida or Safi in Morocco and for the province of Dahkla in Western Sahara, we would require that tomatoes from the Souss-Massa region of Morocco be grown in insect-proof greenhouses registered with, and inspected by, DPVCTRF, and approved by APHIS. The tomatoes would only be allowed to be shipped from the Souss-Massa region of Morocco between December 1 and April 30, inclusive.

Beginning 2 months prior to the start of the shipping season and continuing through the end of the shipping season, DPVCTRF would be required to set and maintain Medfly traps baited with trimedlure, or other approved protein bait, inside the registered greenhouses at a rate of eight traps per hectare, with a minimum of four traps in each greenhouse. All traps would have to be checked every 7 days. We propose to require DPVCTRF to maintain records of trap placement, checking of traps, and any Medfly captures, and to make the records available to APHIS upon request. The trapping records would have to be maintained for 1 year for APHIS review.

Capture of a single Medfly in a registered greenhouse during the period beginning 2 months prior to export and continuing through the duration of the harvest, or detection of a Medfly in a consignment which is traced back to a registered greenhouse, would immediately result in cancellation of exports to the United States from that registered greenhouse until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Exports would not be reinstated until APHIS and DPVCTRF mutually determine that the risk has been properly mitigated.

Packing would have to occur in a pest-exclusionary packinghouse. During the time the packinghouse is in use for exporting fruit to the United States, the packinghouse would only be able to accept fruit from registered production sites. The tomatoes would have to be pink at the time of packing,[1] be packed within 24 hours of harvest, and would have to be safeguarded by fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. In addition, the tomatoes would have to be packed in fruit fly-proof containers or covered by an insect-proof mesh or plastic tarpaulin for transit to the ship or airport and subsequent shipping to the United States. These safeguards would have to be intact upon arrival to the United States. For sea shipments, containers would have to be kept closed if stored within 20 meters of Medfly host materials prior to loading.

In order to reduce the pest pressure of Medfly outside the greenhouse and packinghouse, no shade trees would be permitted within 10 meters of the entry door of the greenhouse or packinghouse, and no fruit fly host material would be permitted within 50 meters of the entry door of the greenhouse. Ground applications of an approved protein bait spray pesticide for Medfly would have to be used on all shade trees and host plants within 200 meters of the greenhouses every 6 to 10 days starting at least 30 days before harvest and continuing through the end of the harvest.

DPVCTRF would be responsible for export certification inspection and issuance of phytosanitary certificates. We propose to require each shipment of pink tomatoes to be accompanied by a phytosanitary certificate issued by

[1] The surface area of a pink tomato is more than 30 percent but not more than 60 percent pink and/or red.

DPVCTRF and bearing the declaration, ''These tomatoes were grown in registered greenhouses in the Souss-Massa region and were pink at the time of packing.''

We are proposing to add these requirements to § 319.56–28 as a new paragraph (g). We would also amend the introductory text of paragraph (c) of that section in order to make it more clear that the provisions in that paragraph apply only to the El Jadida and Safi provinces in Morocco and the province of Dahkla in Western Sahara rather than to all of Morocco and Western Sahara.

Executive Order 12866 and 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.

We are proposing to allow the importation of commercial shipments of tomatoes from the Souss-Massa region of Morocco subject to a systems approach similar to that which is already in place for tomatoes imported into the United States from other areas of Morocco. The systems approach would include requirements for pest exclusion at the production site, fruit fly trapping inside the production site, and pest-exclusionary packinghouse procedures. The tomatoes would also be required to be accompanied by a phytosanitary certificate issued by the Moroccan national plant protection organization with an additional declaration stating that the tomatoes have been grown in registered greenhouses in the Souss-Massa region and were 60 percent or less pink at the time of packing. This action would allow for the importation of commercial consignments of tomatoes from the Souss-Massa region of Morocco into the United States while continuing to provide protection against the introduction of quarantine pests.

U.S. Tomato Production and Trade

The United States is a major tomato producer and importer. The United States produced 1,858,886 metric tons (MT) of fresh tomatoes valued at $1.6 billion in 2006, while imports that year totaled 992,334 MT. Tomato production occurs in many States. The top 10 States (Florida, California, Virginia, Georgia, Ohio, Tennessee, North Carolina, Pennsylvania, New Jersey, and Michigan) accounted for 95 percent of total cash receipts in 2006.[2] According to the 2002 Census of Agriculture (most recent data on farm sizes), there were 19,539 farms producing tomatoes in the United States. About 59 percent of these farms had less than 1 acre in tomatoes. Overall, 19,067 farms (or 97.6 percent) had a total of 95,145 acres planted in tomatoes (about 21.2 percent of the total planted area). They are considered small, averaging about 5 acres and with an average annual income of about $21,500 in 2002. The remaining 2.4 percent of the farms planted a total of 353,355 acres in tomatoes. They averaged 749 acres, with an average annual income of about $3,227,700.[3]

As shown in table 1, U.S. tomato production has fluctuated over recent years, while there has been an upward trend in consumption. The most recent data show production was 1,945,614 MT in 2002, and declined to 1,858,886 MT in 2006, an annual rate of decline of about 1 percent. On the other hand, consumption increased over this same period, from 2,654,359 MT to 2,707,022 MT, and U.S. imports increased from 859,521 MT to 992,334 MT. Mexico is the source of the largest share of imports (85 percent in 2006), followed distantly by Canada (13.6 percent). Other minor suppliers include the Netherlands, Spain, Dominican Republic, Belgium, Israel, Italy, Costa Rica, Poland, and Guatemala. The United States was a net importer throughout the period 2002 to 2006 with average annual imports (over 934,950 MT) dwarfing exports (less than 150,620 MT). Imports represent 35 percent of consumption. Imports from Morocco are expected to be small compared to an already large import base.

TABLE 1.—U.S. TOMATO PRODUCTION, CONSUMPTION, PRICE, EXPORTS AND IMPORTS, 2002–2006

Year	Production in metric tons	Consumption in metric tons	Price per metric ton	Exports in metric tons	Imports in metric tons
2002	1,945,614	2,654,359	$925	150,730	859,521
2003	1,773,474	2,570,398	1,144	142,520	939,444
2004	1,896,670	2,660,936	1,131	167,513	931,779
2005	1,914,360	2,717,953	1,129	148,099	951,692
2006	1,858,886	2,707,022	1,243	144,198	992,334
5-year average (2002–2006)	1,877,800	2,662,134	1,114	150,612	934,954

Source: USDA/ERS, Vegetables and Melons Situation and Outlook Yearbook/VGS–2007/July 26, 2007.

Morocco Tomato Production and Trade

Production of tomatoes in Morocco increased from 991,020 MT in 2002 to 1,245,000 MT in 2006. Of this total, greenhouse tomatoes, which are candidates for export to the United States, represented about 47.6 percent. Of the greenhouse total, 74 percent are produced in the Souss-Massa region.[4] Over this same period, exports fluctuated widely, ranging between 200,460 MT in 2002 and 248,740 MT in 2006, with a significantly lower level of 107,370 MT exported in 2004. The average quantity of tomatoes exported by Morocco during the period was 161,190 MT.

Most of the 248,740 MT exported by Morocco in 2006 went to European Union (EU) countries (218,892 MT), especially France, which received about 86 percent of the EU share. France and Morocco have a long history of bilateral trade that is likely to continue to be strong. Exports to other EU countries accounted for about 14 percent of Morocco's total tomato trade. Non-EU countries accounted for 12 percent of the total, with Russia (20,759 MT) and Switzerland (8,989 MT) major importers.

Trade records show that an average of 91 MT of tomatoes, valued at $209,000, was imported annually by the United States from Morocco between 1998 and

[2] USDA/ERS, Vegetables and Melons Situation and Outlook Yearbook/VGS–2007/July 26, 2007.

[3] USDA/NASS, 2002 Census of Agriculture, United States Data, p. 35.

[4] Christine Chemnitz and Harald Grethe, ''EU Trade Preference for Moroccan Tomato Exports—Who Benefits?'' Paper prepared for presentation at the 99th seminar of the European Association of Agricultural Economics (EAAE), ''The Future of Rural Europe in the Global Agri-Food system,'' 23–27 August 2005, Copenhagen.

2001. The United States has not imported tomatoes from Morocco since 2001. Although the Souss-Massa region is a major tomato-producing area of Morocco, the record of U.S. imports suggests that only a small amount may be expected to be imported from this region.

Impact of Potential Fresh Tomato Imports

We estimate the impact of tomato imports from Morocco on U.S. production, consumption, and prices using a net trade welfare model. The data used were obtained from the Food Agricultural Organization (FAO) and the Global Trade Atlas.[5] The demand and supply elasticities used are −0.62 and 0.37, respectively.[6]

We model three levels of tomato exports to the United States from Morocco of increasing magnitude: (i) 100 MT, roughly equivalent to average annual U.S. imports of tomato from Morocco, 1998–2001; (ii) 10 times this amount (1,000 MT); and (iii) 100 times historic imports (10,000 MT).

Table 2 presents the changes we estimate could result from the assumed levels of U.S. tomato imports from Morocco. These include annual changes in U.S. consumption, production, wholesale price, consumer welfare, producer welfare, and net welfare. The medium level of assumed tomato exports to the United States of 1,000 MT could result in a decline of 49 cents per MT in the wholesale price of tomatoes and a fall in U.S. production of 279 MT. Consumption could increase by 721 MT. Producer welfare could decline by $840,000 and consumer welfare could increase by $1.3 million, yielding an annual net benefit of about $455,000.

TABLE 2.—ESTIMATED IMPACT ON THE U.S. ECONOMY OF TOMATO IMPORTS FROM MOROCCO FOR THREE IMPORT SCENARIOS

Assumed annual tomato imports from Morocco, MT	[1] 100	[2] 1,000	[3] 10,000
Change in U.S. consumption, MT	72	721	7,209
Change in U.S. production, MT	−28	−279	−2,791
Change in wholesale price of tomatoes, dollars per MT	−$0.05	−$0.49	−$4.87
Change in consumer welfare	$129,530	$1,295,440	$12,970,190
Change in producer welfare	−$84,040	−$840,300	−$8,396,870
Annual net benefit	$45,490	$455,140	$4,573,320

Note: The baseline data used are 5-year annual averages for production, consumption, prices, exports and imports, as reported in the last row of table 1. The demand and supply elasticities used are −0.62 and 0.37, respectively (see footnote 5 above).

[1] Four-year (1998 to 2001) average annual tomato exports by Morocco to the United States. Morocco has not exported tomatoes to the United States since 2001.

[2] Ten times the average fresh tomato exports to the United States from Morocco, 1998–2001.

[3] One hundred times the average fresh tomato exports to the United States from Morocco, 1998–2001.

In all three scenarios, consumer welfare gains outweigh producer welfare losses. Even in the third scenario in which we assume imports would be 100 times the level of past imports from Morocco, the decline in producer welfare would represent less than six-tenths of 1 percent of cash receipts received from the sale of domestically produced fresh tomatoes. The price decline in this third scenario also would be only about five-tenths of 1 percent. We welcome public comment that may help us to better understand possible effects of the rule on U.S. fresh tomato producers.

The Small Business Administration (SBA) has established guidelines for determining which firms are to be considered small under the Regulatory Flexibility Act. This rule could affect U.S. producers of fresh tomatoes (classified under Other Vegetable except Potato) and Melon Farming, North American Industry Classification System 111219) and some importers of fresh tomatoes. Vegetable-producing establishments are classified as small if their annual receipts are not more than $750,000.[7] According to the 2002 Census of Agriculture (most recent data on farm sizes), there were 19,539 farms producing tomatoes in the United States. About 59 percent of these farms had less than 1 acre in tomatoes. Overall, 19,067 farms (or 97.6 percent) had a total of 95,145 acres in tomatoes (about 21.2 percent of the total planted area) and are considered small, with an average of about 5 acres and an average annual income of about $21,500 in 2002. The remaining 2.4 percent farms planted a total of 353,355 acres in tomatoes (78.8 percent of the planted area). They averaged 749 acres, with an average annual income of about $3,227,700.

As shown in table 3, the impact of potential tomato imports on U.S. small-entity producers as a result of this rule would be small. The annual decrease in producer welfare per small entity is less than $94, or about 0.43 percent of average annual sales by small entities, when we assume that 10,000 MT of tomatoes would be exported to the United States from Morocco because of this rule, that is, 100 times the level of past imports from Morocco. The dollar decrease in welfare for most small tomato producers would be even smaller, given that the majority planted less than one acre in tomatoes, based on the 2002 Census of Agriculture.

TABLE 3.—THE ECONOMIC IMPACT OF POTENTIAL TOMATO IMPORTS FROM MOROCCO ON U.S. SMALL ENTITIES, ASSUMING ANNUAL EXPORTS OF 10,000 METRIC TONS TO THE UNITED STATES, 2006 DOLLARS

Total decline in producer welfare [1]	−$8,396,870
Decrease in welfare incurred by small entities [2]	−$1,780,140
Average decrease per acre, small entities [3]	−$18.70
Average decrease per small entity [4]	−$93.60
Average decrease as percentage of average sales, small entities [5]	−0.43%

[1] From table 2.

[2] Change in producer welfare multiplied by 21.2 percent, the percentage of total acreage planted by producers with annual revenues of not more than $750,000, that is, small entities. We assume that the change in producer welfare would be proportional to acreage share.

[5] UN/FAO, FAO statistical data (*http://faostat.fao.org*) and Global Trade Information Services, Inc., country edition, August 2007.

[6] The demand elasticity is from K. Huang, ''A complete system of U.S. demand for food,'' Technical Bulletin No. 182, 1993, USDA/ERS, Washington, DC, and the supply elasticity is from S.R. Hammig and R.C. Mettelhammer, ''An evaluation of import tariffs in the Canada-U.S. fresh tomato market,'' Canadian Journal of Agricultural Economics, Vol. 30 (1982): 133–152.

[7] SBA, small business size standards matched to the North American Industry Classification System 2002, Effective October, 2007 (*http://www.sba.gov/size/sizetable2002.html*).

[3] Decrease in producer welfare for small entities divided by 95,145, the number of acres planted by small entities.

[4] Average decrease per acre multiplied by 5, the average number of acres per small entity.

[5] Average decrease per small entity divided by $21,500, the average annual revenue per small entity.

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

Executive Order 12988

This proposed rule would allow tomatoes to be imported into the United States from the Souss-Massa region of Morocco. If this proposed rule is adopted, State and local laws and regulations regarding tomatoes imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2008–0017. Please send a copy of your comments to: (1) Docket No. APHIS–2008–0017, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to allow the importation of commercial consignments of tomatoes from the Souss-Massa region of Morocco subject to a systems approach similar to that which is already in place for tomatoes imported into the United States from other areas of Morocco. The tomatoes would have to be produced under conditions that would include requirements for pest exclusion at the production site, fruit fly trapping inside the production site, and pest-exclusionary packinghouse procedures.

Allowing tomatoes to be imported from Souss-Massa, Morocco into the United States will require information collection activities such as recordkeeping, trapping data, and the completion of phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.0051546 hours per response.

Respondents: Foreign officials, exporters, importers, growers of tomatoes.

Estimated annual number of respondents: 18.

Estimated annual number of responses per respondent: 21.5555.

Estimated annual number of responses: 388.

Estimated total annual burden on respondents: 390 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

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 propose to amend 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. In § 319.56–34, paragraph (j) footnote 8 is redesignated as footnote 9.

3. In § 319.56–28, the introductory text of paragraph (c) is revised and a new paragraph (g) is added to read as follows:

§ 319.56–28 Tomatoes from certain countries.

* * * * *

(c) *Tomatoes (fruit) (Lycopersicon esculentum) from the provinces of El Jadida or Safi in Morocco and the province of Dahkla in Western Sahara.* Pink tomatoes may be imported into the United States from the provinces of El Jadida or Safi in Morocco and the province of Dahkla in Western Sahara only in accordance with this section and other applicable provisions of this subpart.[7]

* * * * *

(g) *Tomatoes (fruit) (Lycopersicon esculentum) from the Souss-Massa region of Morocco.* Pink tomatoes may be imported into the United States from the Souss-Massa region of Morocco only in accordance with this section and other applicable provisions of this subpart.[8]

(1) The tomatoes must be grown in the Souss-Massa region of Morocco in insect-proof greenhouses registered with, and inspected by, the Moroccan Ministry of Agriculture, Division of Plant Protection, Inspection, and Enforcement (DPVCTRF);

[7] See footnote 5 to paragraph (a) of this section.

[8] See footnote 5 to paragraph (a) of this section.

(2) The tomatoes may be shipped from the Souss-Massa region of Morocco only between December 1 and April 30, inclusive;

(3) Beginning 2 months prior to the start of the shipping season and continuing through the end of the shipping season, DPVCTRF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure, or other approved protein bait, inside the greenhouses at a rate of 8 traps per hectare, with a minimum of 4 traps in each greenhouse. All traps must be checked every 7 days;

(4) DPVCTRF must maintain records of trap placement, checking of traps, and any Medfly captures, and make the records available to APHIS upon request. DPVCTRF must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for 1 year for APHIS review;

(5) Capture of a single Medfly in a registered greenhouse during the 2 months prior to export and continuing through the duration of the harvest, or detection of a Medfly in a consignment which is traced back to a registered greenhouse, will immediately result in cancellation of exports from that greenhouse until the source of the infestation is determined, the Medfly infestation has been eradicated, and measures are taken to preclude any future infestation. Exports will not be reinstated until APHIS and DPVCTRF mutually determine that risk mitigation has been achieved;

(6) No shade trees are permitted within 10 meters of the entry door of the greenhouse or packinghouse, and no Medfly host material is permitted within 50 meters of the entry door of the greenhouse or packinghouse. Ground applications of an approved protein bait spray pesticide for Medfly must be used on all shade trees and host plants within 200 meters surrounding the greenhouses as required by APHIS. Application must occur every 6 to 10 days starting at least 30 days before and during harvest;

(7) The tomatoes must be packed within 24 hours of harvest and must be pink at the time of packing. They must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. They must be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulin for transit to the airport or ship and export to the United States. These safeguards must be intact upon arrival in the United States. Sea containers must be kept closed if stored within 20 meters of Medfly host materials prior to loading; and

(8) DPVCTRF is responsible for export certification inspection and issuance of phytosanitary certificates. Each consignment of tomatoes must be accompanied by a phytosanitary certificate issued by DPVCTRF and bearing the declaration, ''These tomatoes were grown in registered greenhouses in El Jadida or Safi Province, Morocco, and were pink at the time of packing'' or ''These tomatoes were grown in registered greenhouses in the Souss-Massa region and were pink at the time of packing.''

Done in Washington, DC, this 7th day of May 2008.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–10923 Filed 5–15–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. APHIS–2007–0141]

Importation of Horses, Ruminants, Swine, and Dogs; Remove Panama From Lists of Regions Where Screwworm Is Considered To Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of live horses, ruminants, swine, and dogs by removing Panama from the lists of regions where screwworm is considered to exist. We are taking this action because the eradication of screwworm from Panama has been confirmed. This action would relieve certain screwworm-related certification and inspection requirements for live animals imported into the United States from Panama.

DATES: We will consider all comments that we receive on or before July 15, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0141* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0141, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0141.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Regionalization Evaluation Services—Import, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–0757.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of pests and diseases of livestock and poultry, including New World screwworm (*Cochliomyia hominivorax*). Screwworm, a pest native to tropical areas and currently found in South America and the Caribbean, causes extensive damage to livestock and other warm-blooded animals. Subparts C, D, E, and F of the regulations govern the importation of horses, ruminants, swine, and dogs, respectively, and include provisions for the inspection and treatment of these animals if imported from any region of the world where screwworm is considered to exist. Sections 93.301, 93.405, 93.505, and 93.600 list all the regions of the world where screwworm is considered to exist.

The regulations include provisions that the animals be inspected, quarantined, and, if necessary, treated for screwworms, and require that the animals be accompanied to the United States by a certificate signed by a full-time salaried veterinary official of the exporting region attesting that the above conditions have been met. Additionally,

on arrival, horses must be quarantined at an animal import center for a minimum of 7 days and must be examined prior to release from quarantine.

The Animal and Plant Health Inspection Service (APHIS) of the Unites States Department of Agriculture (USDA) has responsibility for taking actions to exclude, eradicate, and control agricultural pests, such as screwworm, in the United States. Eradication of indigenous screwworm in the United States using systematic releases of sterile adult screwworm flies was completed in 1966. Sporadic screwworm outbreaks continued to occur and, in 1972, a large outbreak occurred in southwestern States as a result of screwworms entering the United States on livestock from Mexico. This outbreak led to plans that were then developed to progressively eradicate screwworm in Mexico and establish a biological barrier to prevent incursion of screwworm into the United States. In 1972, USDA began a cooperative screwworm program to help Mexico eradicate screwworm. This program was later expanded with the goal of covering the entire Central American Isthmus and Panama, eventually reaching the Darien Gap area on Panama's border with Colombia. Successful cooperative screwworm eradication programs were completed in Mexico in 1991, Belize and Guatemala in 1994, El Salvador in 1995, Honduras in 1996, Nicaragua in 1999, and Costa Rica in 2000.

USDA began a cooperative screwworm eradication program in Panama in 1994 and, in 2006, Panama requested that APHIS evaluate the animal disease status of Panama with respect to screwworm and provided information in support of that request in accordance with 9 CFR part 92, ''Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions.'' Using information submitted to us by the Commission for the Eradication and Prevention of Screwworm (COPEG), Panama's Ministry of Agriculture and Livestock Development (MIDA), and USDA, we have reviewed and analyzed the animal health status of Panama with respect to screwworm. Our determinations concerning this request, based on the information submitted to us and the information we gathered, are set forth below.

Risk Analysis

APHIS conducted a risk analysis to examine the risk of introducing screwworm into the United States from the importation of live horses, ruminants, swine, and dogs from Panama. We summarize our findings for each of the 11 factors in 9 CFR 92.2 below and summarize our risk considerations of these findings following our discussions of the factors.

Authority, Organization, and Veterinary Infrastructure

In Panama, the eradication and prevention of screwworm has been accomplished through the efforts of COPEG, a cooperative program involving MIDA and USDA. COPEG serves as the veterinary authority, and in this role directly controls the specifics of the eradication and prevention program, with the full cooperation of Panama's veterinary infrastructure, as well as financial and scientific support from USDA. COPEG applied the preexisting infrastructure and legal framework developed within Panama for the eradication of foot-and-mouth disease (FMD), and shares many of the FMD program resources developed under the Panama-U.S. Commission for the Prevention of Foot-and-Mouth Disease (COPFA). APHIS has determined that Panama has available the necessary legal authority, infrastructure, budget, and supporting resources to carry out the program and maintain its screwworm-free status.

Disease Status in the Region

The last reported native case of screwworm outside the permanent biological barrier in the area of the Darien Gap occurred in 2001. The continued, but extremely low, finding of screwworm within the buffer area adjoining the border with Colombia is an expected occurrence. The established permanent biological barrier and continued intensive surveillance will act to prevent the spread of screwworm into the rest of Panama and Central America. APHIS could not identify any risks associated with this factor that would pose an unacceptable risk to the United States if trade with Panama in live animals were to occur.

Disease Status of Adjacent Regions

Panama shares borders with Costa Rica and Colombia. While screwworm has been eradicated in Costa Rica, Colombia is still considered to be affected. The existence of a common land border with a screwworm-affected region presents a risk for reintroducing screwworm into Panama from Colombia. However, APHIS has determined that Panama's active disease control and surveillance program and maintenance of the permanent biological barrier with continuous distribution of sterile screwworm flies serves to mitigate the risk of reinfestation of Panama with screwworm.

Extent of Active Disease Control Program

As previously noted, the eradication and prevention of screwworm in Panama was the result of cooperative efforts of USDA and Panama through COPEG, and involved the use of the sterile fly release method and the establishment of a permanent biological barrier between Central America and the South American Continent. APHIS has determined that Panama has an effective prevention program in place based upon Panama's active disease control and surveillance program and maintenance of the permanent biological barrier with continuous distribution of sterile screwworm flies. These findings are described in further detail in the risk analysis.

Vaccination

Vaccination is not an applicable control method for screwworm. Treating wounds and spraying or dipping animals with an approved product such as organophosphates or other insecticide will provide protection against screwworm for up to 7 to 10 days. However, the most effective way to control screwworm infestation remains eradication.

Separation From Adjacent Regions of Higher Risk

The Darien Province forms the border between Panama and Colombia. This border is characterized by mountainous rainforest on the Panamanian side and flat marsh and swamp on the Colombian side of the border. This area is called the Darien Gap and is roughly 100 miles long and 30 miles wide. The land supports very little agriculture and is sparsely populated. There are no major roads crossing the Darien Gap, which limits land crossing from Central America to South America. The natural physical characteristics of the area enhance its effectiveness as a biological barrier. The remote nature of the Darien Gap was first utilized over 40 years ago in the eradication and control effort for FMD because it serves as a natural barrier to dissemination of infectious diseases such as FMD.

APHIS finds that the natural and biological barriers of the Darien Gap limit the movement of fertile screwworm flies or potentially affected animal species from the South American Continent into Panama, effectively controlling the risk of screwworm introduction into Panama

outside of the permanent biological barrier.

Movement Controls

The movement controls established previously as part of FMD legislation continue to be implemented and enforced by COPEG and MIDA officials. These established movement controls limit the illegal movement of livestock from the inspection and control zones in Darien Province and the Kuna Yala region into the rest of Panama. The continuous monitoring of the permanent biological barrier in the Darien Gap is a strong feature of the cooperative FMD and screwworm eradication and prevention programs. The system of inspection posts and monitoring throughout Panama significantly limits the risk of introduction and spread of screwworm in Panama. These findings are described in further detail in the risk analysis.

Livestock Demographics and Marketing Practices

Panama has a total human population of approximately 3 million, with 45 percent of the populations living in rural areas. More than 70 percent of Panamanian exports are agricultural products; however, the vast majority of these imports are plant products such as sugar and bananas. Nonetheless, livestock raising (cattle, pigs, and poultry) is an important and long-established economic activity in Panama, and beef and hides are exported. Panama has about 1.5 million head of cattle on 40,000 holdings. Cattle are primarily raised in the southwestern provinces of Chiriquí, Los Santos, and Veraguas. There are 300,000 swine on 28,000 holdings, located primarily in the central and western provinces of Panamá, Los Santos, Chiriquí, and Veraguas. Cattle are only allowed to be raised in the control zone area of Darien Province where the cattle population density is low and involves roughly 8 percent of the province, with an estimated 0.9 animals per hectare. In the inspection zone area of Darien Province, commercial cattle rearing is prohibited and agricultural production is limited to swine raised for local consumption.

The poultry population in Panama is approximately 14 million chickens on 150,000 holdings located primarily in the central provinces of Panamá, Coclé and Colón. There are an additional 200,000 turkeys, ducks, and geese on 20,000 holdings throughout Panama as well as a small population of horses and mules (135,000 head on 46,000 holdings), and sheep and goats (12,000 head on 1,000 holdings). Few screwworm-susceptible live animals are exported.

Currently, the exportation of live animals is not a large part of Panama's agricultural economy. Screwworm larvae are not able to survive in nonviable tissue, so the importation of meat or other animal products would not pose a risk for introduction of screwworm into the United States.

Disease Surveillance

The infrastructure developed for FMD surveillance has been applied effectively to the screwworm eradication and control program. The measures in place in the inspection and control zones, which includes the Darien Province and the Emera and Kuna Yala indigenous comaracas, are adequate to rapidly detect and eradicate screwworm and prevent the reintroduction of screwworm into the rest of Panama. Sample submission from all parts of Panama reflects both targeted surveillance within the inspection and control areas and surveillance in the livestock production areas. APHIS finds that the active surveillance program in Panama is sufficient to detect the presence of screwworm if it were to be reintroduced into Panama.

Diagnostic Laboratory Capabilities

Laboratory diagnosis of screwworm in Panama is the responsibility of the central Laboratory for the Diagnosis of Vesicular Disease in Toucaman. APHIS considers Panama to have the diagnostic capabilities to adequately diagnose the presence of screwworm.

Emergency Response Capacity

Panama has in place a contingency plan for screwworm outbreaks under the supervision of COPEG. The contingency plans are supplemented by official instructions and guidelines detailing procedures for disease notification and confirmation, sampling methods, and diagnostic procedures.

APHIS has determined that Panama has in place the infrastructure and legal authority to declare an emergency and take appropriate action in case of a screwworm outbreak. The emergency response capability was proven to be effective in 2003 following an accidental release of fertile flies. The emergency response plan is comprehensive and allowed COPEG to respond rapidly with extensive resources, utilizing the cooperation of several government agencies to rapidly contain and eradicate the accidental infestation. APHIS was unable to identify specific limitations in this system that would pose a risk to the United States.

These findings are described in further detail in a risk analysis that may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet on the Regulations.gov Web site. (A link to Regulations.gov is provided under the heading **ADDRESSES** at the beginning of this proposed rule.) The evaluation documents the factors that have led us to conclude that Panama has successfully eradicated screwworm. Therefore, we are proposing to remove Panama from the lists in §§ 93.301(j), 93.405(a)(3), 93.505(b), and 93.600(a) of regions where screwworm is considered to exist.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This proposed rule would amend the regulations regarding the importation of live horses, ruminants, swine, and dogs by removing Panama from the lists of regions where screwworm is considered to exist. We are taking this action because the eradication of screwworm from Panama has been confirmed. This action would relieve certain screwworm-related certification and inspection requirements for live animals imported into the United States from Panama.

No significant change in program operations is anticipated as a result of this proposed rulemaking, nor will this action affect other Federal agencies, State governments, or local governments. The cost of all technical support activities, including establishment of animal quarantine control measures, treatment stations, maintenance of livestock census, screwworm surveillance, establishment and maintenance of laboratory support, and aerial dispersion of sterile screwworm flies in Panama is provided by COPEG and the cooperative agreement funded by the USDA and MIDA. When importing live animals from a region where screwworm is considered to exist, the cost of any required testing (and treatment, if needed) would be paid by the owner of the animals being shipped. Our proposal to remove Panama from the list of regions where screwworm is considered to exist would reduce the cost for producers and others in Panama to export ruminants, swine, horses, and dogs to the United States.

The economic effects associated with the proposed changes are likely to be

limited. This is because the amount of live animals exported into the United States from Panama is likely to remain small. Trade statistics indicate that since 2001, the United States has not imported any ruminants, swine, or dogs from Panama. Equine imports from Panama over this period have numbered only 163, which is approximately 0.06 percent of all horse imports.[1]

According to Small Business Administration size standards for beef cattle ranching and farming (North American Industry Classification System (NAICS) 112111), dairy cattle and milk production (NAICS 112120), hog and pig farming (NAICS 112210), sheep farming (NAICS 112410), goat farming (NAICS 112420), and horse and other equine production (NAICS 112920), as well as the commercial production of dogs, which is classified under ''all other animal production'' (NAICS 112990),[2] operations with not more than $750,000 in annual sales are considered small entities. We do not expect that these producers, small or otherwise, would be affected significantly by the proposed change in Panama's screwworm status. This is because, for the reasons discussed above, live ruminants, swine, horses and dogs from Panama do not play much, if any, of a role in their operations, and few susceptible live animals are expected to be exported.

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed 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 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.301 [Amended]

2. In § 93.301, paragraph (j) is amended by removing the word ''Panama,''.

§ 93.405 [Amended]

3. In § 93.405, paragraph (a)(3) is amended by removing the word ''Panama,''.

§ 93.505 [Amended]

4. In § 93.505, paragraph (b) is amended by removing the word ''Panama,''.

§ 93.600 [Amended]

5. In § 93.600, paragraph (a) is amended by removing the word ''Panama,''.

Done in Washington, DC, this 7th day of May 2008.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–10918 Filed 5–15–08; 8:45 am]

BILLING CODE 3410–34–P

[1] Based on U.S. Census Bureau data, as presented by Foreign Agricultural Service, USDA: *http://www.fas.usda.gov/ustrade/USTImHS10.asp?QI=online_trade_dataTRad.*

[2] The ''all other animal production'' classification also includes the production of other animals, such as adornment birds (swans, peacocks, flamingos), alpacas, birds for sale, buffalos, cats, crickets, deer, elk, laboratory animals, llamas, rattlesnakes, worms, and breeding of pets.

DEPARTMENT OF ENERGY

10 CFR Parts 600 and 1024

RIN 1991–AB77

Assistance Regulations

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend its Assistance Regulations to make changes to streamline and simplify its procedures for soliciting, awarding, and administering its financial assistance agreements. These changes are being made to make technical corrections, to revise sections affected by the Energy Policy Act of 2005, and to further DOE's implementation of the Federal Financial Assistance Management Improvement Act of 1999. DOE is also proposing to remove Part 1024, Procedures for Financial Assistance Appeals, in its entirety.

DATES: Interested parties should submit written comments on or before July 15, 2008.

ADDRESSES: This proposed rule is available and comments may be submitted online at *http://www.regulations.gov*. Comments may also be submitted electronically to *Jacqueline.kniskern@hq.doe.gov*. Comments may be mailed to: Jacqueline Kniskern, Procurement Policy Analyst; MA–61/Forrestal Building; U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585. Electronic submissions are encouraged to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Kniskern, Office of Procurement and Assistance Policy, U.S. Department of Energy, at 202–287–1342 or *Jacqueline.kniskern@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Explanation of Changes
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act of 1980
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under the Treasury and General Government Appropriations Act, 2001
J. Review Under Executive Order 13211
K. Approval by the Office of the Secretary of Energy

I. Background

DOE has been actively engaged in the government-wide effort to streamline and simplify the application, administrative and reporting procedures for Federal financial assistance programs pursuant to the Federal Financial Assistance Management Improvement Act of 1999, Public Law No. 106–107.

As part of this initiative, DOE has solicited comments and suggestions from the grant community and made

changes to its assistance regulations. In particular, the DOE added to 10 CFR Part 600 Subpart D, Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations, in a rule published in the **Federal Register** (68 FR 50645, August 21, 2003).

DOE has also incorporated policy directives issued by the Office of Management and Budget (OMB) that established a standard format for Federal agency announcements of funding opportunities under programs that award discretionary grants or cooperative agreements, established standard data elements for electronically posting synopses of Federal agencies' announcements of funding opportunities, and required Federal agencies to post synopses of their discretionary grant and cooperative agreement funding opportunity announcements on the Grants.gov Web site, *http://www.Grants.gov*. The final rule incorporating these policy directives was published in the **Federal Register** at 69 FR 7865 on February 20, 2004. In addition, DOE developed a standard format for its funding opportunity announcements and revised systems to comply with the new posting requirements.

Today, DOE is proposing to update, streamline and simplify the general rules in Subpart A of its Financial Assistance Rules. DOE is proposing to eliminate sections that are duplicative of other sections that incorporated OMB Circulars and provide no additional guidance or information to applicants and recipients or require applicants to look at multiple sections for the same information. In addition, DOE is proposing to eliminate sections containing outdated requirements, which can be confusing to applicants and recipients.

Section 988 of the Energy Policy Act of 2005, Public Law No. 109–58, established Department-wide cost sharing requirements for most research, development, demonstration, and commercial application activities initiated after the date of enactment. The requirements of section 988 take the place of the numerous, current cost sharing requirements that have been contained in previous authorization and appropriations laws. This proposed rule will implement the requirements of section 988 replacing those promulgated after the Energy Policy Act of 1992, Public Law No. 102–486.

DOE is making technical corrections to provide consistency and clarity throughout the Financial Assistance Rules as put in practice and to provide references to sections in Subpart D that were not incorporated with that rule, 68 FR 50645 (August 21, 2003).

Lastly, the DOE Financial Assistance Appeals Board was abolished when DOE's Energy Board of Contract Appeals was merged into the Civilian Board of Contract Appeals as required by section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law No. 109–163. While DOE has maintained appeal rights by providing for appeals to the DOE Senior Procurement Executive (SPE) (see section 29 of this notice for changes in 10 CFR 600.22), the regulatory procedures designed for the Financial Assistance Appeals Board are not necessary for those appeals. Internal agency procedures will be used instead.

II. Section-by-Section Analysis

DOE is proposing to amend 10 CFR Parts 600 and 1024 as follows.

1. Section 600.2 is amended by changing ''solicitation'' to ''funding opportunity announcement'' in paragraph (a) to be consistent with section 600.

2. Section 600.3 is amended by capitalizing ''Contracting Officer'' in the definition of ''Amendment''; by adding definitions for ''Cost sharing or matching'' and ''Total project cost'' to facilitate changes made in section 600.30, ''Cost Sharing.''

3. Section 600.4 is amended to add a reference to section 600.304 in paragraph (a) that was not incorporated at the time Subpart D was added to Part 600.

4. Section 600.6 is amended in paragraphs (b), (b)(1), and (c)(7) by changing ''solicitation'' to ''funding opportunity announcement'' to be consistent with section 600.8. Paragraphs (b) and (d) are amended to restate the concurrence and approval requirements in plain English. This revision is not intended to alter substantially the concurrence and approval requirements.

5. Section 600.8 has been renamed ''Funding Opportunity Announcement'' to more accurately reflect the coverage of this section. Paragraphs (a), (a)(1), and (a)(2) are amended by deleting ''solicitation'' and ''program announcement'' and replacing with ''funding opportunity announcement'' or its acronym ''FOA.''

6. Section 600.10 is amended to add the requirement for all applicants to be registered in the Central Contractor Registration and to make changes related to the receipt of applications electronically.

7. Section 600.11 is deleted in its entirety as this information more accurately belongs in a funding opportunity announcement when applicable.

8. Section 600.12 is deleted in its entirety as the requirements of assurances and certifications have been incorporated Government-wide in the standard application forms maintained by Grants.gov.

9. Section 600.14 is marked as reserved for consistency and clarity with the rest of Part 600.

10. Section 600.15 is amended by changing ''solicitation'' to ''funding opportunity announcement'' in paragraph (b)(2) for clarity and consistency with the rest of Part 600.

11. Section 600.16 is amended by inserting a new paragraph (b) that describes a recipient's acceptance of an award and redesignating the old paragraph (b) as paragraph (c).

12. Section 600.17 is amended to facilitate changes to administration requirements.

13. Section 600.18 is deleted in its entirety. The recipient's responsibility for acceptance of an award has been moved to section 600.16.

14. Section 600.19 is amended by deleting, in the second sentence, the word ''briefly'' and the phrase ''and, if for grounds other than unavailability of funds, shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request'' as the applicant may always request additional information no matter the reason for the unsuccessful application.

15. Section 600.21 is amended by adding a cross reference to the applicable section of Subpart D in paragraph (a) that was not incorporated at the time Subpart D was added to Part 600.

16. Section 600.22 is amended to update the section for changes to the Financial Assistance Appeals Board. The Financial Assistance Appeals Board was staffed by the Energy Board of Contract Appeals which was abolished by Section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law No. 109–163. The Department is maintaining the right of recipients to appeal certain Contracting Officer's determinations by providing for appeals to the DOE or National Nuclear Security Administration (NNSA) Senior Procurement Executive (SPE) in place of the now defunct appeals board. Specifically, the reference to 10 CFR 1024 in paragraph (a) is deleted as this Part is being removed by this proposed rulemaking; paragraph (d) is updated with the correct contact information for the two SPEs; paragraphs (e) and (f) are updated by changing the reference to the Board

to SPEs. Paragraph (f) is also updated to include references to the applicable sections of Subpart D of this part that were not added at the time Subpart D was implemented.

17. Section 600.23 is deleted in its entirety as this information has recently been moved to Title 2 of the CFR as part of the implementation of the OMB guidance provided at 2 CFR Part 180 and as part of OMB's initiative to streamline and consolidate all federal regulations on nonprocurement debarment and suspension.

18. Section 600.24 is amended by adding references to Subpart D of 10 CFR part 600 in addition to Subparts B and C that were not updated as part of the rulemaking that added Subpart D in 2003.

19. Section 600.25 is amended by adding references to Subpart D of 10 CFR Part 600 in addition to Subparts B and C that were not updated as part of the rulemaking that added Subpart D in 2003 and to delete certain references to Subparts B, C and D that do not require written notification as previously indicated in Section 600.25.

20. Section 600.26 is deleted in its entirety as it is duplicative of sections in other areas of Part 600.

21. Section 600.28 is deleted in its entirety as it is duplicative of sections in other areas of Part 600 and 10 CFR Part 601.

22. Section 600.29 is amended to raise the dollar threshold to provide greater flexibility to Contracting Officers and recipients in award and administration of financial assistance agreements.

23. Section 600.30 is amended to incorporate the requirements of section 988 of the Energy Policy Act of 2005, Public Law No. 109–58, which standardized cost sharing requirements for research and development activities.

24. Section 600.31 is amended by capitalizing all references to Contracting Officer for consistency purposes.

25. Section 600.112 is amended by changing ''solicitation'' to ''funding opportunity announcement'' to be consistent with 600.8; deleting paragraphs (a)(1), (a)(2) and (b)(1) in order to delete requirements to use specific DOE forms as DOE is using the forms maintained by Grants.gov for applying for financial assistance as part of an overall government-wide policy; and renumbering paragraphs (b)(2) and (c) as paragraphs (c) and (d).

26. Section 600.113 is amended to correct the citation for ''Debarment and Suspension'' to 2 CFR Parts 180 and 901.

27. Section 600.117 is deleted in its entirety as representations, certifications and assurances are now received through the submission of standard application forms with government-wide changes due to the implementation of Grants.gov.

28. Section 600.305 is amended to correct the citation for Debarment and Suspension to 2 CFR Parts 180 and 901.

29. DOE is proposing to remove Part 1024 in its entirety as the Financial Assistance Appeals Board, staffed by the Energy Board of Contract Appeals, was abolished by the Department to comply with section 847 of the National Defense Authorization Act for Fiscal Year 2006, Public Law No. 109–163. The Department is maintaining the right of recipients to appeal Contracting Officer's determinations by providing for appeals to the DOE or NNSA Senior Procurement Executive (SPE) in place of the now defunct appeals board. See 10 CFR Part 600.22 as amended by this proposed rulemaking.

III. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under the Regulatory Flexibility Act of 1980

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 Executive Order 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 Office of General Counsel's Web site: *http://www.gc.doe.gov*. DOE has reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. Today's proposed rule would subject small entities either to requirements that parallel government-wide requirements that OMB Circular A–110 establishes for other assistance awards, or to less burdensome requirements that enable firms from the commercial marketplace to participate in DOE research, development, and demonstration projects. Today's proposed amendments would not alter the substance of the OMB requirements or impose significant additional burdens. On the basis of the foregoing, DOE certifies that the rule does not have a significant economic impact on a substantial number of small entities. DOE did not prepare a regulatory flexibility analysis for this rulemaking.

C. Review Under the Paperwork Reduction Act of 1995

This regulatory action will not impose any additional reporting or recordkeeping requirements subject to approval under the Paperwork Reduction Act.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule establishes guidelines and procedures for application and review, administration, audit and closeout of assistance instruments, and, therefore, is covered under the Categorical Exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, 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 proposed 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 Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 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; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 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 Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or if 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 rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law No. 104–4, generally requires federal agencies to examine closely the impacts of regulatory actions on state, local, or tribal governments. Subsection 101(5) of Title I of that law defines a federal intergovernmental mandate to include a regulation that would impose upon state, local, or tribal governments an enforceable duty, except a condition of federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on state, local, and tribal governments, in the aggregate, or the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of the title requires a federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to state, local, or tribal governments, or the private sector, of $100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposed a rule containing a significant federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of state, local, and tribal governments. 2 U.S.C. 1534.

This proposed rule would amend the assistance regulations with changes that streamline and simplify procedures for soliciting, awarding, and administering financial assistance agreements. The proposed rule would not result in the expenditure by state, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law No. 105–277, requires federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. 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 implementing 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.

J. 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 OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 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 proposed 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.

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

K. Approval by the Office of the Secretary of Energy

The Office of the Secretary has approved the issuance of this proposed rule.

List of Subjects in 10 CFR Parts 600 and 1024

Administrative practice and procedure, Assistance programs.

Edward R. Simpson,

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

David O. Boyd,

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

For the reasons set out in the preamble, Part 600 of Chapter II, and Part 1024 of Chapter X, Title 10 of the Code of Federal Regulations are proposed to be amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.*, unless otherwise noted.

§ 600.2 [Amended]

2. Section 600.2 is amended in paragraph (a) by removing ''solicitations'' and adding ''funding

opportunity announcements'' in its place.

3. Section 600.3 is amended in the definition of ''Amendment'' by capitalizing ''Contracting Officer'', and by adding new definitions in alphabetical order for ''Cost sharing or matching'' and ''Total Project Cost'' to read as follows:

§ 600.3 Definitions.

* * * * *

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

* * * * *

Total Project Cost means all allowable costs, as set forth in the applicable federal cost principles, incurred in accomplishing the objective of the project during the project period, including the value of contributions made by third parties and costs incurred by Federally Funded Research and Development Centers.

4. Section 600.4 paragraph (a)(1) is amended by revising the second sentence to read as follows:

§ 600.4 Deviations.

(a) *General.* (1) * * * The use of optional or discretionary provisions of this part, including special restrictive conditions used in accordance with §§ 600.114, 600.212, and 600.304 are not deviations. * * *

* * * * *

5. Section 600.6 is revised to read as follows:

§ 600.6 Eligibility.

(a) *General.* DOE shall solicit applications for financial assistance in a manner which provides for the maximum amount of competition feasible.

(b) *Restricted eligibility.* If DOE restricts eligibility, an explanation of why the restriction of eligibility is considered necessary shall be included in the funding opportunity announcement, program rule, or published notice.

(1) If the aggregate amount of DOE funds available for award under a funding opportunity announcement or published notice is $1 million or more, unless authorized by statute or program rule, such restriction of eligibility shall be:

(i) Supported by a written determination initiated by the program office;

(ii) Concurred in by legal counsel and the Contracting Officer; and

(iii) Approved by an official no less than one level below the responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority.

(2) Where the amount of DOE funds is less than $1 million, the cognizant Head of Contracting Activity (HCA) and the Contracting Officer may approve the determination.

(c) *Noncompetitive financial assistance.* DOE may award a grant or cooperative agreement on a noncompetitive basis only if the application satisfies one or more of the following selection criteria:

(1) The activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity.

(2) The activity is being or would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

(3) The applicant is a unit of government and the activity to be supported is related to the performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

(4) The applicant has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications.

(5) The award implements an agreement between the United States Government and a foreign government to fund a foreign applicant.

(6) Time constraints associated with a public health, safety, welfare or national security requirement preclude competition.

(7) The proposed project was submitted as an unsolicited proposal and represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned funding opportunity announcement, and if, as determined by DOE, a competitive funding opportunity announcement would not be appropriate.

(8) The responsible program Assistant Secretary, Deputy Administrator, or other official of equivalent authority determines that a noncompetitive award is in the public interest. This authority may not be delegated.

(d) *Approval requirements.* (1) Where the amount of DOE funds is $1 million or greater, determinations of noncompetitive awards shall be:

(i) Documented in writing;

(ii) Concurred in by the responsible program technical official and local legal counsel; and

(iii) Approved, prior to award, by the responsible program Assistant Secretary, Deputy Administrator, or official of equivalent authority and the Contracting Officer. The approval authority may be delegated to one organizational level below the Assistant Secretary, Deputy Administrator, or official of equivalent authority.

(2) Where the amount of DOE funds is less than $1 million, determinations of noncompetitive awards shall be:

(i) Documented in writing;

(ii) Concurred in by local legal counsel, unless for a particular award or class of awards of $1 million or less, review is waived by legal counsel; and

(iii) Approved by the cognizant HCA and the Contracting Officer.

§ 600.8 Funding opportunity announcement.

6. Section 600.8 is amended as follows:

a. The section heading is revised as set forth above.

b. In paragraph (a) introductory text, the first sentence is amended by removing ''Program announcement'' and adding ''Funding Opportunity Announcements (FOA)'' in its place.

c. In paragraph (a)(1), the last sentence is amended by removing ''Solicitations'' and adding ''FOAs'' in its place.

d. In paragraph (a)(2) introductory text, the first sentence is amended by removing ''Program announcements'' and adding ''FOAs'' in its place.

7. Section 600.10 is amended as follows:

a. In paragraph (b), the first sentence is amended by removing ''and in the number of copies''

b. In paragraph (c)(1), the second sentence is amended by removing ''or other approved DOE application form''

c. Paragraph (c)(4) is removed.

d. A new paragraph (f) is added to read as follows:

§ 600.10 Form and content of application.

* * * * *

(f) Registration is required in the Central Contractor Registration (CCR) for all applications. Information on registration can be obtained at *http://www.ccr.gov/Grantees.aspx*.

§§ 600.11 and 600.12 [Removed]

8. Sections 600.11 and 600.12 are removed and reserved.

§ 600.14 [Reserved]

9. Section 600.14 is added and reserved.

§ 600.15 [Amended]

10. Section 600.15, paragraph (b)(2) is amended by removing ''solicitation'' and adding ''funding opportunity announcement'' in its place.

11. Section 600.16, is amended by redesignating paragraph (b) as paragraph (c), and by adding a new paragraph (b) to read as follows:

§ 600.16 Legal authority and effect of an award.

* * * * *

(b) Recipients are free to accept or reject the award. A request to drawdown DOE funds constitutes acceptance; however DOE may require formal acceptance of an award.

* * * * *

12. Section 600.17 is revised to read as follows:

§ 600.17 Contents of Award.

Each financial assistance award shall be made on a cover agreement page, which contains basic identifying and funding information. The award will identify special terms and conditions, program regulations, the National Policy Assurances, and any other provisions necessary to establish the respective right, duties, obligations, and responsibilities of DOE and the recipient, consistent with the requirements of this part.

§ 600.18 [Removed]

13. Section 600.18 is removed and reserved.

§ 600.19 [Amended]

14. Section 600.19 is amended by removing, in the second sentence, ''briefly'' and ''and, if for grounds other than unavailability of funds, shall offer the unsuccessful applicant the opportunity for a more detailed explanation upon request''.

§ 600.21 [Amended]

15. Section 600.21, paragraph (a) is amended by removing ''§§ 600.153 and 600.242'' and adding ''§§ 600.153, 600.242 and 600.342'' in its place.

16. Section 600.22 is amended as follows:

a. In the last sentence of paragraph (a), the words ''available in 10 CFR Part 1024'' are removed.

b. Paragraphs (d) and (f)(1) are revised.

c. Paragraphs (e), (f)(2), (f)(3) and (f)(4) are amended by removing ''Board'' and adding '' SPE'' in its place, for every occurrence.

The revisions read as follows:

§ 600.22 Disputes and appeals.

* * * * *

(d) *Right of appeal.* Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the cognizant SPE for either DOE or the National Nuclear Security Administration (NNSA). The mailing address for the DOE SPE is Office of Procurement and Assistance Management, 1000 Independence Ave., SW., Washington, DC 20585. The mailing address for the NNSA SPE is Office of Acquisition and Supply Management, 1000 Independence Ave., SW., Washington, DC 20585.

* * * * *

(f) *Review on appeal.* (1) The SPE shall have no jurisdiction to review

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to §§ 600.114, 600.212, or 600.304;

(ii) DOE denial of a request for a deviation under §§ 600.4, 600.103, 600.205, or 600.303 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.125, 600.127, 600.222, 600.230, 600.315, or 600.317 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under §§ 600.162(a)(1), (2), (3) or (5); 600.243(a)(1), (a)(3), or §§ 600.352(a)(1), (2), (3) or (5) for suspensions only; or §§ 600.162(a)(4), 600.243(a)(4) or 600.352(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under §§ 600.144, 600.236, or 600.331 of this part or under another term or condition of the award; * * *

§ 600.23 [Removed]

17. Section 600.23 is removed and reserved.

§ 600.24 [Amended]

18. Section 600.24 is amended in paragraphs (a)(3) and (b) introductory text by removing ''or § 600.243(a)'' and adding ''§§ 600.243(a), 600.312(g) or 600.352(a)'' in its place.

19. Section 600.25 is amended in:

a. Paragraph (a)(1) by removing ''or § 600.243(a)'' and adding ''§ 600.243(a) or 600.352(a)'' in its place.

b. Paragraph (a)(2) by removing ''§ 600.23'' and adding ''2 CFR Part 180 and 901'' in its place.

c. Paragraph (b) is revised.

d. Paragraph (d) by removing ''or §§ 600.243 through 600.244'' and adding ''§§ 600.243 through 600.244 or §§ 600.350 through 600.353'' in its place.

e. Paragraph (f) by removing ''or §§ 600.243 through 600.244'' and adding ''§§ 600.243 through 600.244 or §§ 600.350 through 600.353'' in its place.

The revision reads as follows:

§ 600.25 Suspension and termination.

* * * * *

(b) *Notification requirements.* Except as provided in §§ 600.24, 600.162(a) , 600.243(a) or 600.352(a) before suspending or terminating an award for cause, DOE shall mail to the awardee (by certified mail, return receipt requested) a separate written notice in addition to that required by § 600.24(a) at least ten days prior to the effective date of the suspension or termination. Such notice shall include, as appropriate:

(1) The factual and legal basis for the suspension or termination;

(2) The effective date or dates of the DOE action;

(3) If the action does not apply to the entire award, a description of the activities affected by the action;

(4) Instructions concerning which costs shall be allowable during the period of suspension, or instructions concerning allowable termination costs, including in either case, instructions concerning any subgrants or contracts;

(5) Instructions concerning required final reports and other closeout actions for terminated awards (see §§ 600.170 through 600.173, §§ 600.250 through 600.252 and §§ 600.350 through 600.353);

(6) A statement of the awardees' right to appeal a termination for cause pursuant to section 600.22; and

(7) The dated signature of a DOE Contracting Officer.

* * * * *

§ 600.26 [Removed]

20. Section 600.26 is removed and reserved.

§ 600.28 [Removed]

21. Section 600.28 is removed and reserved.

§ 600.29 [Amended]

22. Section 600.29 is amended as follows:

a. Paragraph (b)(1), ''$100,000'' is removed and ''$250,000'' is added in its place.

b. In paragraphs (b)(5) and (b)(6) ''Contracting Officer'' is capitalized.

23. Section 600.30 is revised to read as follows:

§ 600.30 Cost sharing.

In addition to the requirements of §§ 600.123, 600.224, or 600.313, the following requirements apply to research, development, demonstration and commercial application activities projects:

(a) Cost sharing is required for most financial assistance awards for research, development, demonstration and commercial applications activities initiated after the enactment of the Energy Policy Act of 2005 on August 8, 2005. This requirement does not apply to:

(1) An award under the small business innovation research program or the small business technology transfer program; or

(2) A program with cost sharing requirements defined by other than Section 988 of the Energy Policy Act of 2005 including other sections of the 2005 Act and the Energy Policy Act of 1992.

(b) A cost share of at least 20 percent of the cost of the activity is required for research and development except where:

(1) A research or development activity of a basic or fundamental nature has been excluded by an appropriate officer of the Department, generally an Under Secretary; or

(2) The Secretary or delegatee has determined it is necessary and appropriate to reduce or eliminate the cost sharing requirement for a research and development activity of an applied nature.

(c) A cost share of at least 50 percent of the cost of a demonstration or commercial application program or activity is required unless the Secretary or delegatee has determined that it is necessary and appropriate to reduce the cost sharing requirements, taking into consideration any technological risk relating to the activity.

(d) Cost share shall be provided by non-Federal funds unless otherwise authorized by statute. In calculating the amount of the non-Federal contribution:

(1) Base the non-Federal contribution on total project costs, including the cost of work where funds are provided directly to a partner, consortium member or subrecipient, such as a Federally Funded Research and Development Center;

(2) Include the following costs as allowable in accordance with the applicable cost principles:

(i) Cash;

(ii) Personnel costs;

(iii) The value of a service, other resource, or third party in-kind contribution determined in accordance with the applicable Circular of the Office of Management and Budget;

(iv) Indirect costs or facilities and administrative costs; and/or

(v) Any funds received under the power program of the Tennessee Valley Authority (except to the extent that such funds are made available under an annual appropriation Act);

(3) Exclude the following costs:

(i) Revenues or royalties from the prospective operation of an activity beyond the time considered in the award;

(ii) Proceeds from the prospective sale of an asset of an activity; or

(iii) Other appropriated Federal funds.

(iv) Repayment of the Federal share of a cost-shared activity under Section 988 of the Energy Policy Act of 2005 shall not be a condition of the award.

§ 600.31 [Amended]

24. Section 600.31 is amended as follows:

a. In paragraph (c), Contracting Officer is capitalized in all occurrences.

b. In paragraph (d) introductory text, Contracting Officer is capitalized.

c. In paragraph (f)(5), Contracting Officer is capitalized.

25. Section 600.112 is revised to read as follows:

§ 600.112 Forms for applying for Federal assistance.

(a) An application for an award shall be on the form or in the format specified in a program rule or in the funding opportunity announcement. When a version of the Standard Form 424 is not used, DOE shall indicate whether the application is subject to review by the State under Executive Order 12372.

(b) DOE may request and the applicant shall submit the minimum budgetary information necessary to evaluate the costs of the proposed project.

(c) DOE may, subsequent to receipt of an application, request additional information from an applicant when necessary for clarification or to make informed preaward determinations.

(d) DOE may require that an application for a continuation or renewal award be made in the format or on the forms authorized by paragraphs (a) and (b) of this section.

§ 600.113 [Amended]

26. Section 600.113 is amended by removing ''10 CFR 1036'' and adding ''2 CFR 180 and 901'' in its place.

§ 600.117 [Removed]

27. Section 600.117 is removed and reserved.

§ 600.305 [Amended]

28. Section 600.305 is amended by removing ''10 CFR 1036'' and adding ''2 CFR 180 and 901'' in its place.

29. Under the authority of the Department of Energy Organization Act, Public Law 95–91, 91 Stat. 577 (42 U.S.C. 7101, *et seq.*); E.O. 10789; Public Law 95–224, 92 Stat. 3 (41 U.S.C. 501–509), part 1024 is removed.

PART 1024—[REMOVED]

[FR Doc. E8–11005 Filed 5–15–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–1125; FRL–8363–6]

Pesticide Inert Ingredient; Proposal to Revoke the Obsolete Tolerance Exemption for Sperm Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke the existing obsolete tolerance exemption under 40 CFR 180.910 for residues of sperm oil conforming to 21 CFR 172.210 as part of a broader administrative effort to correct errors and clarify permitted uses of pesticide inert ingredients in the Code of Federal Regulations. There have not been any active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations containing this substance for many years. In addition, the sperm whale (from which sperm oil is derived) is a federally listed endangered species, and taking (or harming) this species is prohibited under the U.S. Endangered Species Act. Therefore, since this exemption corresponds to uses no longer current or registered under FIFRA in the United States, EPA is proposing to revoke the existing tolerance exemption under 40 CFR 180.910 because it is no longer necessary.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1125, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001.

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–1125. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

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

FOR FURTHER INFORMATION CONTACT: Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• 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 in Unit II. 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background and Statutory Findings

This proposed rule is issued pursuant to section 408(e) of FFDCA (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)).

III. What Action Is the Agency Taking

EPA, acting on its own initiative, is proposing to revoke the existing obsolete tolerance exemption under 40 CFR 180.910 for residues of sperm oil conforming to 21 CFR 172.210 as part of a broader administrative effort to correct errors and clarify permitted uses of pesticide inert ingredients in the Code of Federal Regulations. It is EPA's general practice to revoke tolerances and tolerance exemptions for pesticide chemical residues (which include both active and inert ingredients) for which there are no associated active registered uses under FIFRA, or for which there are no registered products to which the tolerance or tolerance exemption applies, or for tolerances or tolerance exemptions that have been superseded.

EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide chemicals for which there are no active registrations or uses under FIFRA.

Generally, EPA will proceed with the revocation of these tolerance and tolerance exemptions on the grounds discussed in Unit II. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances or tolerance exemptions on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance or tolerance exemption is no longer needed.

3. The tolerance or tolerance exemption is not supported by data that demonstrate that the tolerance or tolerance exemption meets the requirements under FQPA.

EPA believes it is appropriate to propose the revocation of the tolerance exemption associated with this inert ingredient because there are no longer any active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations containing sperm oil. Additionally, since sperm oil is derived from the sperm whale and the sperm whale is a federally listed endangered species, taking (or harming) this species to obtain sperm oil is prohibited by the Endangered Species Act. EPA does not expect there to be existing stocks of sperm oil in the hands of users because the sperm whale has been listed as an endangered species since 1970. Also, EPA is not aware of any food or feed commodities treated with sperm oil imported into the United States.

Therefore, for the reasons stated herein, EPA is proposing to revoke the existing exemption from the requirement of a tolerance for residues of sperm oil conforming to 21 CFR 172.210 under 40 CFR 180.910.

IV. When Does This Action Become Effective?

EPA is proposing that revocation of this tolerance exemption become effective on the day the final rule revoking this tolerance exemption is published in the **Federal Register**. If you have comments regarding whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under Unit I.B. Similarly, if you have comments regarding this tolerance exemption revocation or the effective date of the revocation, please submit comments as described under Unit I.B. Any commodities treated with the pesticide products containing the inert ingredient subject to this proposed rule, and in the channels of trade following the tolerance revocation, shall be subject to section 408(1)(5) of FFDCA, as established by the FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide chemical was applied to such food.

V. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke a specific tolerance exemption established under section 408(d) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 et seq.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, the Agency hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be

addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 3175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: May 6, 2008.

Deborah McCall,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

§ 180.910 [Amended]

2. Section 180.910 is amended by removing the following exemption and any associated Limits and Uses from the table: Sperm oil conforming to 21 CFR 172.210.

[FR Doc. E8–10922 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7781]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before August 14, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7781, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C.

4001 *et seq.*, and do not fall under the APA.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Leon County, Florida, and Incorporated Areas				
East Drainage Ditch	Approximately 400 feet upstream of South Blair Stone Road.	None	+90	City of Tallahassee.
	Approximately 1,000 feet upstream of Paul Russell Road.	None	+94	
Indianhead Branch 2	Just downstream of Putnam Drive	+59	+63	City of Tallahassee.
	Just upstream of East Magnolia Drive	None	+67	
Northeast Drainage Ditch Tributary 1.	Approximately 200 feet upstream of the confluence of Northeast Drainage Ditch.	+90	+91	City of Tallahassee.
	Just downstream of Lonnbladh Road	+90	+95	
Northeast Drainage Ditch Tributary 2.	Approximately 450 feet upstream of the confluence of Northeast Drainage Ditch.	+65	+60	City of Tallahassee.
	Just upstream of U.S. Route 319	+93	+95	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Tallahassee

Maps are available for inspection at Tallahassee City Hall, 300 South Adams Street, Tallahassee, FL.

Bannock County, Idaho, and Incorporated Areas				
Rapid Creek	Just upstream of Interstate Highway 15	+4544	+4541	Unincorporated Areas of Bannock County, City of Inkom.
	At Private Road approximately 400 feet downstream of Hoot Owl Road.	+5062	+5060	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Inkom

Maps are available for inspection at 365 North Rapid Creek Road, Inkom, ID 83245.

Unincorporated Areas of Bannock County

Maps are available for inspection at 130 North 6th Avenue, Suite C, Pocatello, ID 83201.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Butler County, Kansas, and Incorporated Areas				
Walnut River	Approximately 850 feet downstream of SW 220th Street.	None	*1181	City of Douglas.
	Approximately 1000 feet upstream of SW 210th Street	None	*1190	
Whitewater River	Approximately 1000 feet upstream of State Highway 254.	None	*1254	City of Towanda.
	Approximately 1320 feet upstream of State Highway 254.	None	*1264	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Douglass

Maps are available for inspection at City Hall, 322 S. Forrest, Douglass, KS 67039.

City of Towanda

Maps are available for inspection at City Hall, 110 S. 3rd Street, Towanda, KS 67114.

Casey County, Kentucky, and Incorporated Areas				
Green River	Approximately 4300 feet downstream of confluence with Highway 49 Tributary.	None	+793	Unincorporated Areas of Casey County.
	Approximately 900 feet upstream of KY–817	None	+808	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Casey County

Maps are available for inspection at 625 Campbellsville Street, Liberty, KY 42539.

Middlesex County, Massachusetts, and Incorporated Areas				
Aberjona River	At outlet to Lower Mystic Lake	+8	+7	Town of Arlington, City of Medford, City of Woburn, Town of Reading, Town of Winchester.
	At divergence of Aberjona River—North Spur	+84	+83	
Aberjona River—North Spur	At confluence with Aberjona River	+62	+64	Town of Reading, City of Woburn, Town of Wilmington.
	Approximately 300 feet upstream of Willow Street	+84	+83	
Alewife Brook (Little River)	At confluence with Mystic River	+6	+7	Town of Arlington, City of Somerville.
	Approximately 320 feet downstream of Henderson Street.	+6	+7	
Assabet River	Entire reach within Town of Hudson	None	+181	Town of Hudson.
Assabet River	At upstream side of Interstate 495	None	+213	City of Marlborough.
	Approximately 800 feet upstream of Interstate 495	None	+214	
Beaver Brook 1	Approximately 4,040 feet upstream of Beaver Street	None	+54	Town of Belmont.
	Approximately 5,765 feet upstream of Beaver Street	None	+75	
Beaver Brook 3	Approximately 1,000 feet downstream of Pleasant Street.	+75	+71	Town of Dracut.
	At Pleasant Street	+75	+71	
Butter Brook	Approximately 1,600 feet upstream of Main Street	+173	+176	Town of Westford.
	Approximately 2,100 feet downstream of Old Road	+175	+176	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Concord River	Approximately 450 feet upstream of Interstate Route 495 East.	+106	+104	Town of Billerica, Town of Chelmsford, Town of Tewksbury.
	Approximately 2,280 feet upstream of Interstate Route 495 East.	+106	+105	
Cummings Brook	At confluence with Shakers Glen Brook	+46	+47	City of Woburn.
	Approximately 130 feet upstream of Winn Street	+101	+102	
Fort Meadow Brook	At confluence with Assabet River	None	+181	Town of Hudson.
	Approximately 100 feet downstream of Main Street	+180	+181	
Fort Meadow Reservoir	Entire reach within City of Marlborough	None	+262	City of Marlborough.
Hales Brook	Approximately 1,350 feet east of Industrial Avenue East and Lowell Connector intersection—Backwater area.	+103	+102	City of Lowell.
	At confluence with River Meadow Brook	+103	+102	
	Approximately 1,500 feet upstream of Industrial Avenue East.	+103	+102	
Hales Brook	Approximately 1,350 feet east of Industrial Avenue East and Lowell Connector intersection—Backwater area.	None	+102	Town of Chelmsford.
	Approximately 2,200 feet downstream of Interstate Route 495.	+101	+102	
	Approximately 200 feet downstream of Interstate Route 495.	+101	+102	
Halls Brook	At confluence with Aberjona River	+50	+54	City of Woburn.
	Approximately 220 feet upstream of Merrimac Street	+106	+95	
Horn Pond Brook/Fowle Brook.	At confluence with Aberjona River	+20	+23	City of Woburn, Town of Winchester.
	At confluence with Shakers Glen Brook	+46	+47	
Little Brook	At confluence with Cummings Brook	+68	+67	City of Woburn.
	Approximately 400 feet upstream of Bedford Road	+103	+95	
Lubbers Brook	Approximately 1,800 feet downstream of Cook Street	None	+102	Town of Wilmington.
	Approximately 3,090 feet upstream of Cook Street	None	+103	
Marginal Brook	Entire reach within Town of Tewksbury	None	+126	Town of Tewksbury.
Merrimack River	Approximately 6,000 feet upstream of County boundary.	+55	+57	Town of Chelmsford, Town of Dracut, Town of Tewksbury, Town of Tyngsborough.
	Approximately 10,730 feet downstream of Tyngsborough Bridge.	+103	+104	
Mill Brook	Approximately 315 feet downstream of confluence with Tributary to Mill Brook.	None	+119	Town of Bedford.
	Approximately 315 feet upstream of confluence with Tributary to Mill Brook.	None	+119	
Mill Brook 3	Upstream side of Mystic Valley Parkway	+11	+7	Town of Arlington, Town of Lexington.
	Approximately 70 feet upstream of Boston and Maine Railroad.	+173	+168	
Mystic River	Upstream side of Mystic Valley Parkway—Route 16	+4	+5	Town of Arlington, City of Medford.
	At outlet to Lower Mystic Lake	+8	+7	
Nonesuch Pond	Entire reach within Town of Natick	None	+174	Town of Natick.
North Lexington Brook	Approximately 400 feet upstream of confluence with Shawsheen River.	+115	+116	Town of Lexington.
	At Boston and Maine Railroad	+116	+117	
Pages Brook	Approximately 250 feet northwest of Larsen Lane and Outlook Road intersection—Backwater area.	None	+119	Town of Billerica.
Peppermint Brook	At confluence with Beaver Brook 3	+75	+71	Town of Dracut.
	Approximately 50 feet downstream of State Route 113	+75	+74	
Richardson Brook	At confluence with Merrimack River	+59	+57	Town of Dracut.
	Downstream side of State Route 10 Dam	+59	+58	
Schneider Brook	At confluence with Aberjona River	+42	+45	City of Woburn.
	Approximately 880 feet upstream of Forbes Street	+83	+84	
Shakers Glen Brook	At confluence with Fowle Brook	+46	+47	City of Woburn.
	At Russell Street	+63	+62	
Shawsheen River	At upstream side of Boston and Maine Railroad	+90	+91	Town of Wilmington.
	Approximately 1.9 miles downstream of Boston Road (State Road 3A).	+93	+97	
Shawsheen River	Approximately 2,125 feet upstream of Bridge Street	+116	+113	Town of Lexington.
	Approximately 300 feet upstream of Summer Street	None	+116	
Snake Brook	Approximately 2,420 feet downstream of Main Street	None	+138	Town of Natick.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 2,760 feet downstream of Commonwealth Avenue.	None	+147	
Sweetwater Brook	At confluence with Aberjona River	+35	+36	City of Woburn, Town of Stoneham.
	Approximately 120 feet upstream of Lindenwood Road	+65	+63	
Town Line Brook	Approximately 370 feet upstream of Lynn Street	None	+8	City of Everett.
	Approximately 1,650 feet upstream of Lynn Street	None	+8	
	Approximately 1,850 feet downstream of County boundary.	None	+8	
Trull Brook	At confluence with Merrimack River	+55	+57	Town of Tewksbury.
	Approximately 100 feet upstream of Golf Course Bridge.	+55	+57	
Valley Pond	Entire shoreline within community	None	+175	Town of Weston.
Wellington Brook	Approximately 600 feet upstream of confluence with Alewife Brook (Little River).	+8	+7	City of Cambridge, Town of Belmont.
	Approximately 1,700 feet upstream of Concord Avenue	+22	+20	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Cambridge

Maps are available for inspection at City of Cambridge Department of Public Works, 795 Massachusetts Avenue, Cambridge, MA.

City of Everett

Maps are available for inspection at Everett City Hall, Office of the City Engineer, 484 Broadway Street, Room 26, Everett, MA.

City of Lowell

Maps are available for inspection at Lowell City Hall, 375 Merrimack Street, Lowell, MA.

City of Marlborough

Maps are available for inspection at Marlborough City Hall, Office of Inspectional Services, 140 Main Street, Marlborough, MA.

City of Medford

Maps are available for inspection at Medford City Hall, Engineering Division, 85 George P. Hassett Drive, Room 300, Medford, MA.

City of Somerville

Maps are available for inspection at Somerville City Hall, Public Works Department, 93 Highland Avenue, Somerville, MA.

City of Woburn

Maps are available for inspection at Woburn City Hall, Engineering Department, 10 Common Street, Woburn, MA.

Town of Arlington

Maps are available for inspection at Arlington Town Hall, 730 Massachusetts Avenue, Arlington, MA.

Town of Bedford

Maps are available for inspection at Bedford Town Hall, 10 Mudge Way, Bedford, MA.

Town of Belmont

Maps are available for inspection at Town of Belmont Community Development Office, 19 Moore Street, Belmont, MA.

Town of Billerica

Maps are available for inspection at Town of Billerica Building Department, 365 Boston Road, Billerica, MA.

Town of Chelmsford

Maps are available for inspection at Town of Chelmsford Public Works Department, 50 Billerica Road, Chelmsford, MA.

Town of Dracut

Maps are available for inspection at Dracut Town Hall, 11 Springpark Avenue, Dracut, MA.

Town of Hudson

Maps are available for inspection at Town of Hudson Inspections Department, 78 Main Street, Hudson, MA.

Town of Lexington

Maps are available for inspection at Town of Lexington Engineering Department, 1625 Massachusetts Avenue, Lexington, MA.

Town of Natick

Maps are available for inspection at Natick Town Hall, 13 East Central Street, Natick, MA.

Town of Reading

Maps are available for inspection at Reading Town Hall, Building Department, 16 Lowell Street, Reading, MA.

Town of Stoneham

Maps are available for inspection at Town of Stoneham Department of Public Works, 16 Pine Street, Stoneham, MA.

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

Town of Tewksbury

Maps are available for inspection at Tewksbury Town Hall, Building Department, 1009 Main Street, Tewksbury, MA.

Town of Tyngsborough

Maps are available for inspection at Tyngsborough Town Hall, Building Department, 25 Bryants Lane, Tyngsborough, MA.

Town of Westford

Maps are available for inspection at Westford Town Hall, Building Department, 55 Main Street, Westford, MA.

Town of Weston

Maps are available for inspection at Weston Town Hall, 11 Town House Road, Weston, MA.

Town of Wilmington

Maps are available for inspection at Wilmington Town Hall, 121 Glen Road, Wilmington, MA.

Town of Winchester

Maps are available for inspection at Town of Winchester Engineer's Office, 71 Mt. Vernon Street, Winchester, MA.

Flooding source(s)	Location of referenced elevation **	* Elevation in meters (NGVD) + Elevation in meters (NAVD) # Depth in meters above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Commonwealth of Puerto Rico County, Puerto Rico and Incorporated Areas				
Rio Bairoa	At confluence with Rio Grande de Loiza Reach 2	∧51.3	∧52	Commonwealth of Puerto Rico.
	Approximately 290 meters upstream of Calle Gardena	∧90.3	∧90.1	
Rio Caguitas	At confluence of Rio Grande de Loiza Reach 2	∧52.1	∧52	Commonwealth of Puerto Rico.
	Approximately 1,830 meters upstream of Calle Canaboncito.	None	∧81.2	
Rio Grande de Loiza Reach 2.	Approximately 3,640 meters downstream of PR Highway 30.	None	∧50.8	Commonwealth of Puerto Rico.
	Approximately 2,700 meters upstream of Carretera 183	None	∧96.2	
Rio Gurabo	At confluence with Rio Grande de Loiza Reach 2	∧49.6	∧51.3	Commonwealth of Puerto Rico.
	Approximately 1,800 meters upstream of Carretera 31	None	∧71.4	
Rio Turabo	At confluence with Rio Grande de Loiza Reach 2	∧59.1	∧59.7	Commonwealth of Puerto Rico.
	Approximately 7,500 meters upstream of Calle Georgetti.	None	∧105.8	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Commonwealth of Puerto Rico

Maps are available for inspection at Puerto Rico Planning Board, North Building, 16th Floor, De Diego Avenue, Stop 22, Santurce, San Juan, PR.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Minnehaha County, South Dakota, and Incorporated Areas				
Big Sioux River	Approximately 7120 feet downstream from South Dakota Highway 42.	None	+1286	Unincorporated Areas of Minnehaha County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1000 feet downstream from South Dakota Highway 42.	None	+1289	
Big Sioux River	Approximately 2500 feet downstream from Burlington Northern Santa Fe Railroad.	+1306	+1305	City of Sioux Falls, Unincorporated Areas of Minnehaha County.
	Approximately 1000 feet downstream from West 60th Street.	+1432	+1431	
Cherry Creek	Approximately 70 feet downstream from South Sertoma Avenue.	+1435	+1434	City of Sioux Falls, Unincorporated Areas of Minnehaha County.
	Approximately 1000 feet upstream from East 266th Street.	None	+1458	
Skunk Creek	2750 feet downstream from Interstate 29	+1417	+1422	City of Sioux Falls, Unincorporated Areas of Minnehaha County.
	Approximately 50 feet downstream from South 467th Avenue.	None	+1459	
Willow Creek	Approximately 1130 feet upstream from North Lamesa Drive.	None	+1438	Unincorporated Areas of Minnehaha County, City of Sioux Falls.
	Approximately 1300 feet upstream from Highway 38	None	+1475	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.
Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Sioux Falls

Maps are available for inspection at 224 West 9th Street, P.O. Box 7402, Sioux Falls, SD 57117–7402.

Unincorporated Areas of Minnehaha County

Maps are available for inspection at County Administration Building, 415 N. Dakota Avenue, Sioux Falls, SD 57106.

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

Dated: May 9, 2008.

Michael K. Buckley,

Deputy Assistant Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–10933 Filed 5–15–08; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217]

In the Matter of Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on various proposals to increase participation in the broadcasting industry by new entrants and small businesses, especially minority- and women-owned businesses, with the goal of promoting innovation, diversity of ownership and viewpoints, spectrum efficiency, and competition in media markets.

DATES: Comments for this proceeding are due on or before July 15, 2008. Reply comments are due on or before August 14, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–294; FCC 07–217, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* 445 12th Street, SW., Washington, DC 20554, with a copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, 202–418–2133.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''*Notice*'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217, adopted December 18, 2007, and released March 5, 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 Notice of Proposed Rulemaking

1. It has long been a basic tenet of national communications policy that the widest dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. By broadening participation in the broadcast industry, the Commission seeks to strengthen the diverse and robust marketplace of ideas that is essential to our democracy. As the Supreme Court has recognized, ''Safeguarding the public's right to receive a diversity of views and information over the airwaves is * * * an integral component of the FCC's mission.'' *Metro Broadcasting, Inc.* v. *FCC,* 497 U.S. 547, 567 (1990), overruled in part on other grounds in *Adarand Constructors Inc.* v. *Pena,* 515 U.S. 200, 227 (1995) (''*Adarand*''). Beyond fostering viewpoint diversity, the Commission also believes that taking steps to facilitate the entry of new participants into the broadcasting industry may promote innovation in the field because in many cases, the most potent sources of innovation often arise not from incumbents but from new entrants. The Commission believes that this may be particularly true with respect to small businesses, including those owned by minorities and women. Expanding the pool of potential competitors in media markets to include such businesses should bring new competitive strategies and approaches by broadcast station owners in ways that benefit consumers in those markets.

2. The *Notice* invites comment on several ways to increase participation in the broadcasting industry by new entrants and small businesses, especially minority- and women-owned businesses, with the goal of promoting innovation, diversity of ownership and viewpoints, spectrum efficiency, and competition in media markets. Specifically, the *Notice* invites comment on the following proposals:

3. *Definition of Socially and Economically Disadvantaged Businesses.* The Commission's *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''*Order*'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228; MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217, adopted December 18, 2007, and released March 5, 2008 defines the class of entities benefiting from the rule and policy changes set forth in the *Order* as ''eligible entities,'' using the SBA definition of small businesses. The Commission seeks comment on whether it can or should expand that definition. Specifically, the *Notice* invites comment on whether to use a race-conscious definition of socially and economically disadvantaged business (SDB) to define the relevant class of companies. For example, to qualify for participation in Small Business Administration's Small Disadvantaged Business program, a small business must be at least 51 percent owned and controlled by a socially and economically disadvantaged individual or individuals. Under the program, African Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Pacific Americans, and Native Americans are presumed to qualify, and other individuals can qualify if they can show by a preponderance of the evidence that they are disadvantaged. Because any race conscious measure the Commission might adopt to promote minority ownership would be subject to strict scrutiny under the equal protection component of the Due Process Clause of the Fifth Amendment, parties who contend that a race-conscious classification would be the best approach, or indeed even a permissible approach, to encourage ownership diversity and new entry must explain specifically, using empirical data and legal analysis, how such a classification would not just be tailored, but narrowly tailored, to advance a governmental interest that is not simply important, but compelling.

4. *Other Definitions.* The *Notice* likewise seeks comment on a proposal for ''full file'' review, i.e., a race-neutral, individualized review, similar to that used by Michigan, California, and Texas state university admission departments following the passage of state initiatives and court decisions banning affirmative action. Under this proposal, each applicant would demonstrate (to the satisfaction of an independent, politically insulated professional entity, perhaps modeled after the Universal Service Board) that it has overcome significant social and economic disadvantages, the overcoming of which would be predictive of success in a challenging industry and of the promotion of diversity of information and perspectives and satisfaction of unmet needs in the industry. This disadvantage often, but not necessarily, would be related to race or gender discrimination or their present effects. Hypothetical applicants who might benefit from ''full file'' review include an applicant injured in military service in Iraq who later completed a leadership training program; a rural applicant who put herself through college and successfully ran a previously-bankrupt AM station; and a Spanish language radio company owner who succeeded despite advertiser resistance to program language and format.

5. The *Notice* seeks comment on the ''full file'' proposal generally and poses a number of specific questions regarding the proposal. Would the grant of broadcast licenses to applicants who have overcome social and economic disadvantages likely result in greater diversity of broadcast information and viewpoints? How should ''full file review'' be structured so that it is race-neutral and does not trigger strict scrutiny? Can the ''full file review'' framework applied and upheld in the context of university admissions be applied to the media industry in an effective manner to foster diversity of viewpoints without involving the Commission in content-based decisions that could raise First Amendment concerns? How should the Commission or an ''independent, politically insulated professional entity'' assess whether an applicant has overcome social and economic disadvantage and whether granting the application would increase diversity of viewpoints? How could the concept of ''full file'' review, which in the higher education context is used to compare candidates competing for a limited number of admissions slots, be applied in an administratively feasible manner to a situation where applicants will not be compared to each other (because mutually exclusive license applications are resolved through an auction) but instead will be evaluated to see if they meet a specified standard? Should an applicant bear the burden of proving specifically that it would contribute to diversity of viewpoints as a result of having overcome these disadvantages? When the applicant is a company, which individuals would the Commission evaluate to determine if the company meets the relevant standard under ''full file review''? Would a determination by an independent board be advisory to the

Commission? Would an affirmative determination qualify the entity as an eligible entity for all future transactions or for a specified period of time or would it have to seek a new determination for each transaction? How would ''full file'' review or a similar standard compare to an ''eligible entity'' or SDB standard in promoting viewpoint and/or ownership diversity? Should the Commission substitute the ''full file review'' approach for the ''eligible entity'' approach until it can adopt an SDB standard or should the Commission adopt it in lieu of an SDB standard? The Commission also invites commenters to propose any alternative definition of ''eligible entity'' that they believe would better advance our goals of promoting ownership diversity and new entry. With respect to any proposed definition that is race conscious, commenters should address the constitutionality of such definition.

6. *Share-Time Proposals.* The *Notice* also invites comment on a proposal that the Commission afford FM licensees that broadcast in HD using IBOC technology the voluntary option of assigning the right to operate an HD radio stream to an SDB. As proposed by a commenter, the SDB operating the HD radio stream would receive a license under the Commission's share-time rules. The commenter further proposes that the Commission use its share-time procedures to permit the bifurcation of a single-channel, analog FM station into an ''Entertainment Station'' and a ''Free Speech Station.'' Such a ''Free Speech Station'' would be independently owned by an SDB, have at least 20 non-nighttime hours per week of airtime, and be primarily devoted to non-entertainment programming. The Commission seeks specific comment on these proposals. In particular, the Commission seeks comment on the extent to which, if the SDB (or eligible entity) becomes a Commission licensee, these proposals may provide the non-SDB entity a way to circumvent FCC ownership restrictions.

7. *Retention On Air of AM Expanded Band Owners' Stations if One of the Stations Is Sold to an Eligible Entity.* In 1987, the Commission began a comprehensive review of numerous technical, legal, and policy issues relating to AM broadcasting in an effort to identify and address its most pressing problems. The allotment of additional spectrum (1605–1705 kHz) for broadcasting provided the Commission with a ''unique opportunity'' to address these problems, most importantly the channel congestion and interference that had significantly degraded the technical quality of the service. Accordingly, the Commission limited initial applications for expanded band authorizations to existing AM broadcasters in the standard band and gave the highest priority to those fulltime stations that would most reduce congestion and interference by moving their operations to one of the new channels. To ensure that this process achieved its intended goals, the Commission further provided that the license for an expanded band station would issue conditioned upon the surrender of one of the paired frequencies, preferably the standard band frequency, following a five-year transition period during which dual operations would be permissible. On reconsideration, the Commission reordered its priorities in light of Congress's recent amendment of the Act to add section 331(b) and gave first priority to a special class of four AM stations—those daytime-only stations licensed to serve communities with populations of more than 100,000 persons that lacked a fulltime aural service. A total of 54 expanded band stations were licensed through this process. Two construction permit applications and one license application remain pending. To date, 19 licensees have surrendered their lower band licenses, and one licensee has surrendered its expanded band license at the end of each of these licensees' five-year dual-operating authority period. In March 2006, eleven licensees and four public interest groups petitioned the Commission to waive the surrender requirement in order to allow the transfer of one of the stations to a recognized small business, or its retention by the licensee if the licensee is a small business.

8. The Commission has received comments arguing that the technical benefits that the Commission anticipated from the surrender of lower band AM licenses are now outweighed by continued service to the listening public. Commenters claim that ''numerous'' AM licensees have specifically targeted the programming on the lower band paired station to serve the needs of minorities and niche audiences. They propose that the Commission extend the dual operating period authorization and the temporary exemption of the expanded band authorization for multiple ownership purposes. As proposed, licensees would be permitted, prior to a specified disposition date, to assign or transfer control of one the paired AM stations to a qualifying ''small business'' as that term applies to radio broadcasters in the Small Business Administration's Regulations. Under the proposal, the consideration that a licensee could receive for one of its paired AM stations could not exceed 75 percent of the station's fair market value. Further, in the event that the licensee is itself a small business, it would be permitted to retain permanently both authorizations. The Commission seeks comment on this proposal. In particular, the Commission seeks comment on how to properly balance the competing goals of improving the technical viability of the AM service and promoting ownership diversity. In the event that the Commission adopts this proposal, the Commission also seeks comment on the length of time licensees operating paired stations should be given to dispose of one station to a qualifying small business. The Commission tentatively concludes that any licensee, that itself is not a qualifying small business and that fails to consummate the sale of one station by the disposition date must surrender one of the two licenses by the disposition date. Moreover, the Commission tentatively concludes that in the event that a licensee fails to take any action by the disposition date, the lower band station shall automatically expire on that date. The Commission seeks comment on these procedures.

9. In a related matter, the Commission seeks comment on a proposal to reinstate 20 licenses that were unconditionally surrendered by licensees in accordance with the terms of their authorizations. The Commission notes that subsequent licensing activity may preclude reinstatement and that certain circumstances, such as the sale of a former transmitter site and station equipment, may make resumption of operations by a formerly paired station infeasible or impossible. The Commission seeks comment on whether the Commission should accept construction permit applications from these licensees and the technical standards that the Commission should use to process these applications. The Commission seeks comment on whether the acceptance of such applications without providing an opportunity for competing applications complies with *Ashbacker* principles, *Ashbacker Radio Corp.* v. *FCC,* 326 U.S. 327 (1945). Lastly, the Commission seeks comment on whether a successor licensee should be permitted to seek reinstatement of a surrendered license.

10. *Modifications to FCC Form 323.* As part of the Commission's quadrennial media ownership review, several commenters and FCC study authors expressed concern about the Commission's data collection process and have proposed revisions to FCC

Form 323 to enhance its utility in measuring current levels of minority and female broadcast ownership. FCC Form 323 is filed by commercial AM, FM and television stations at two-year intervals on the anniversary date of the station's renewal application filing date. Partnerships composed entirely of natural persons and sole proprietorships are not required to file the FCC Form 323 on a biennial basis. In addition to gender information, the racial/ethnic origin categories include American or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. The Commission periodically posts its compilation of data derived from these forms on its website. Commenters have criticized the form as an inadequate basis upon which to develop effective minority ownership policies, regardless of whether such policies are race conscious, and note that the authors of several media ownership studies indicated that the Commission's most recent research study on minority ownership is ''not sufficient'' to validate a race conscious initiative. Other commenters state that problems with the Form 323 derive from the process the Commission uses to automate and cull the data from the forms. Areas of concern include the filing of multiple forms for a single station; the practice of some filers of providing racial/gender information in a separate attachment to the form; the lack of questions regarding gender/racial classifications on the Form 323–E, which is used by noncommercial educational stations; and filers who write ''no change—info on file'' as opposed to electronically validating or completing the information previously submitted, including race, gender, and ethnicity data. The *Notice* seeks initial comment on issues related to the Commission's collection of information on the racial and gender identity of radio and television licensees. The Commission tentatively concludes that it should make changes to Form 323 to increase the accuracy of the data collected and the potential uses for the form. Sole proprietorships and partnerships composed entirely of natural persons have not routinely been required to complete Form 323. The Commission solicits input from the public on whether expansion of the scope of parties required to file the biennial ownership report would enhance the race, gender, and ethnicity data collection. Further, the Commission seeks comment on whether it should establish a uniform filing date for all radio and television station licensees and eliminate the current practice of permitting licensees to file on the anniversary of their renewal date. Would a single filing date pose a burden on licensees? What are the benefits of a single filing date requirement? Would the data collection be improved with such a change? Under current procedures, if the licensee or permittee is directly or indirectly controlled by another entity, or if another entity has an attributable interest in such licensee or permittee, a separate Form 323 must be submitted for such entity. Does this practice make the race, gender and ethnicity data more, or less, reliable? What other changes to Form 323 would make use of the data more reliable? Are there reasons that justify maintaining the current collection process, such as streamlining, paperwork burdens, or administrative efficiencies? The Commission is likewise concerned about the accuracy of data submitted by licensees, as this information may form the basis for Commission policy and rulemaking. Should the Commission adopt a new form to more accurately collect information from licensees on race, gender, and ethnicity, and delete these questions from the Form 323? The Commission requests comments addressing whether the Commission should conduct audits to assess the accuracy of the information filed in the annual ownership report. Would the data collection be enhanced if the Commission imposed an audit process? If so, what type of audit should the Commission conduct? Should the Commission periodically audit a random sample of filers? How often should the audit be conducted? What penalties should be imposed for licensees that file inaccurate information on Form 323?

11. *Structural Rule Waivers for Creating Incubator Programs.* The *Notice* seeks comment on a proposal advanced by one of the commenting parties advocating the grant of a structural rule waiver for parties that create and maintain an incubator program for SDBs. The proposed ''Trial Incubation Plan'' would operate for two years, at which point the Commission would analyze its effects before renewing or expanding it. The Trial Incubation Plan would apply only to the local radio ownership rule in large markets and would permit the incubating party to acquire only one additional station beyond the applicable local cap, including any same-service subcap. That additional station must be in the same service (AM or FM) and in the same market, or a market of approximately the same size, as the newly SDB-controlled station. Furthermore, the proposal would require that the two transactions be contingent, such that the SDB transaction would close prior to or simultaneously with the incubating party's transaction. The Commission seeks comment on the proposal.

12. *Opening FM Spectrum for New Entrants.* The *Notice* seeks comment on a proposal that FM stations be permitted to change their community of license to any community located in the same radio market, provided that ''if the community of license being vacated (the ''Original Community'') has no other full power AM or FM or LPFM station licensed to it and which originates local programming for at least 15% of its airtime (a ''Local Service LPFM''), the licensee vacating the Original Community must underwrite the cost of licensing, construction and one full year of operation of a new Local Service LPFM to be licensed to the Original Community.'' The Commission seeks comment on this proposal.

13. *Must-Carry for Class A Television Stations.* Commenters propose that the Commission actively support cable must-carry legislation for Class A stations. The Commission agrees that cable carriage of Class A television stations could promote both programming diversity and localism, given that all such stations are required to originate local content, and seeks comment on whether the FCC has authority under the Act to adopt rules requiring such carriage.

14. *Re-allocation of TV Channels 5 and 6 for FM Service.* Certain commenters have urged the Commission to give a ''hard look'' to a proposal that the Commission re-allocate TV Channels 5 and 6 for FM broadcasting, thereby substantially expanding the existing FM band. The Commission agrees that the proposal could yield tremendous opportunities for new entrants, and the *Notice* seeks comment on it.

15. *Other Proposals.* The *Notice* further invites comment on a number of proposals advanced by the National Association of Black Owned Broadcasters (''NABOB'') and Rainbow/PUSH in their comments submitted January 2, 2003 in the course of the 2002 Biennial Review proceeding. The Commission believes that the record with respect to these proposals should be refreshed. Specifically, NABOB and Rainbow/PUSH propose that the Commission: (1) Examine assignment and transfer applications to discern the potential impact of the proposed transaction on minority ownership; (2) decline to grant temporary waivers of

the local ownership rules to parties proposing a transaction that would create station combinations exceeding the ownership caps; (3) treat local marketing agreements as attributable interests; and (4) allow minorities to own station combinations equal to the largest combination in a market to counterbalance the economic impact of grandfathered holdings. The *Notice* seeks comment on these proposals. In particular, the Commission asks parties to address the Commission's authority to enact the proposals, the extent to which the proposals would apply, and whether the proposals contradict any of the proposals the FCC adopted in the *Order.*

Notice of Proposed Rulemaking

Initial Regulatory Flexibility Act Analysis

16. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), set forth in an Appendix to the *Notice,* concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing procedures and deadlines for comments and reply comments in response to the *Notice,* and should have a distinct heading designating them as responses to the IRFA. The Commission will send a copy of the *Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). 5 U.S.C. 603(a). In addition, the *Notice* and IRFA (or summaries thereof) are here published in the **Federal Register**.

A. Need for, and Objective of, the Proposed Rules

17. The *Notice* invites comment on several ways to increase participation in the broadcasting industry by new entrants and small businesses, especially minority- and women-owned businesses, with the goal of promoting innovation, diversity of ownership and viewpoints, spectrum efficiency, and competition in media markets. The *Notice* first invites comment on how to define the class of eligible entities that will be entitled to benefit from the Commission's proposals. The *Notice* then invites comment on a range of proposals to stimulate ownership diversity, including permitting share-time arrangements between FM licensees and SDBs; extension of the dual-operating period authorization and temporary exemption of expanded-band authorization in the AM radio context; and reinstatement of 20 AM licenses that were voluntarily surrendered. In addition, the Commission seeks comment on proposed revisions to FCC Form 323 to enhance the ability of the Commission to collect information on the racial and gender identity of radio and television licensees. The *Notice* further requests comment on a proposal to grant structural rule waivers for parties that create and maintain incubator programs for SDBs and on a proposal that the FCC permit FM licensees to change their station community of license to any community located in the same radio market under certain conditions, and the Commission seeks input on whether the Commission has authority to require cable operators to carry Class A television stations and whether the Commission should reallocate TV Channels 5 and 6 for FM broadcasting. Finally, the Commission requests refreshed comments on certain proposals advanced by NABOB and the Rainbow/PUSH Coalition during the 2002 Biennial Review of the Commission's media ownership rules.

B. Legal Basis

18. This *Notice* is adopted pursuant to sections 1, 2(a), 3, 4(i, j), 257, 301, 303(r), 307–10, and 614–15 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153, 154(i, j), 257, 301, 303(r), 307–10, 534–35.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

19. 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 proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under section 3 of the Small Business Act. 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 SBA.

20. *Television Broadcasting.* In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than $13 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of December 7, 2007, about 825 (66 percent) of the 1,250 commercial television stations in the United States have revenues of $13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the attribution rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

21. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

22. *Radio Broadcasting.* The Small Business Administration defines a radio broadcasting entity that has $6.5 million or less in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of December 7, 2007, about 10,500 (95 percent) of 11,050 commercial radio stations in the United States have revenues of $6.5 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

23. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

24. *Class A TV, LPTV, and TV translator stations.* The rules and policies adopted herein may also apply to licensees of Class A TV stations, low power television (''LPTV'') stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities, since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

25. *FM Translator Stations and Low Power FM Stations.* The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $6.5 million in annual receipts. Currently, there are approximately 5,540 licensed FM translator and 262 booster stations and 820 licensed LPFM stations. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

26. *Cable and Other Subscription Programming.* 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.

27. *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.

28. *Open Video Systems.* Open Video Systems (''OVS'') provide subscription services, including cable services. In 2007, the SBA created a small business size standard for Cable and Other Subscription Programming. The Census Bureau has not collected information on the size distribution of firms in the new standard. Accordingly, we will apply the new size standard to Census Bureau data for 2002 regarding the size distribution of Cable and Other Program Distribution. This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified a large number of OVS operators, and some of these are currently providing service. Affiliates of RCN Corporation (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that it does not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS. Given this fact, the Commission concludes that those entities might qualify as small businesses, and therefore may be affected by the rules and policies adopted herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

29. Depending on the rules adopted as a result of this *Notice,* the Report and Order (R&O) ultimately adopted in this proceeding may contain new information collections for eligible entities and/or modified ones for incumbent broadcasters. Any changes in recording or recordkeeping would result from changes in the Commission's forms necessary to implement any rules

adopted to promote new entry of small businesses and eligible entities. As noted above, we invite small entities to comment on any such recordkeeping issues in response to the *Notice*.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

30. The Commission is required by law to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives 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 or reporting requirements under the rule for 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 small entities.

31. As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above. The *Notice* describes and seeks comment on several possible ways to ease entry into the broadcasting business by small entities that have traditionally faced significant difficulties in entering broadcasting. The *Notice* seeks comment on how the proposals herein will achieve that goal. The Commission especially encourages small entities to comment on the proposals in the *Notice* in this proceeding. The Commission welcomes comment on how to minimize any burdens on small cable system operators that might result from eligible entities being entitled to carriage on such systems under the must carry statute and rules.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

32. None.

Ex Parte Restrictions

33. This proceeding has been designated ''permit but disclose'' for purposes of the Commission's ex parte rules, 47 CFR 1.1200–1.1216. Ex parte presentations will be governed by the procedures set forth in 47 CFR 1.1206 applicable to non-restricted proceedings.

Filing Requirements

34. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed: (1) By using the Commission's Electronic Comment Filing System (ECFS), (2) by using the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

35. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection 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. Documents will be available electronically in ASCII, Word 97 and/or Adobe Acrobat.

36. *Accessibility Information.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act Analysis

37. The *Notice* seeks comment on potential information collection requirements. The Commission will invite the general public to comment at a later date on any rules developed as a result of this proceeding that require the collection of information, as required by the Paperwork Reduction Act of 1995, Public Law 104.13. The Commission will publish a separate notice seeking these comments from the public. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we will seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ordering Clauses

It is ordered, that pursuant to the authority contained in sections 1, 2(a), 4(i, j), 257, 303(r), 307–10, 336, and 614–15 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i, j), 257, 303(r), 307–310, 336, 534–35, *notice is hereby given* of the proposals described in this *Third Further Notice of Proposed Rule Making.*

It is further ordered that the Reference Information Center, Consumer Information Bureau, shall send a copy of this *Notice of Proposed Rule Making,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–11043 Filed 5–15–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 9, 12, and 52

[FAR Case 2007–006; Docket 2007–0001; Sequence 11]

RIN 9000–AK80

Federal Acquisition Regulation; FAR Case 2007–006, Contractor Compliance Program and Integrity Reporting (2nd Proposed Rule)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; additional changes proposed.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are seeking comments on changes to the proposed rule, FAR Case 2007–006, Contractor Compliance Program and Integrity Reporting, published in the **Federal Register** at 72 FR 64019, November 14, 2007, for which the initial comment period has closed, that may be included in the final rule. The Councils do not contemplate publishing a final or interim rule until public comments are received and considered on the specific changes discussed further in this document.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before July 15, 2008 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2007–006 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2007–006'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2007–006. Follow the instructions provided to complete the ''Public Comment and submission Form''. Please include your name, company name (if any), and ''FAR Case 2007–006'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2007–006 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2007–006.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published FAR Case 2007–006, Contractor Compliance Program and Integrity Reporting, as a proposed rule in the **Federal Register** at 72 FR 64019, November 14, 2007. The proposed rule was published, at the request of the Department of Justice (DOJ), in order to—

- Require contractors to have a code of ethics and business conduct;
- Establish and maintain specific internal controls to detect and prevent improper conduct in connection with the award or performance of Government contracts or subcontracts; and
- Notify contracting officers without delay whenever they become aware of violations of Federal criminal law with regard to such contracts or subcontracts.

The proposed rule was a follow-on case to FAR Case 2006–007, published as a final rule in the **Federal Register** on November 23, 2007 (72 FR 65873).

Thirty three respondents commented on the proposed rule. The Councils currently are reviewing the comments and are considering changes to the proposed rule.

- The public and other interested parties have expressed concerns about—
  - ○ The proposed exemption for contracts to be performed entirely outside the United States; and
  - ○ The proposed exemption for contracts for the acquisition of commercial items.
- In addition, the Department of Justice (DOJ) proposes to add a requirement for contractors to report violations of the civil False Claims Act, and add knowing failure to timely report such violations as an additional cause for debarment or suspension to FAR Subpart 9.4.

Therefore, the Councils are seeking comments and recommendations regarding the changes to the proposed rule FAR text listed later in this notice. This notice includes only the sections of the proposed rule affected by these changes, summarized as follows:

(1) *Require inclusion of the clause FAR 52.203–13 in contracts and subcontracts that will be performed outside the United States (see FAR 3.1004 and 52.203–13(d) in the initial proposed rule*). This change would result in making the clause requirements for a contractor code of business ethics and conduct, business ethics awareness and compliance program, and internal control system applicable to contracts performed outside the United States.

The exemption from the requirement to include the clause 52.203–13 in contracts and subcontracts to be performed entirely outside the United States was a carry-over from the proposed and final rules under FAR Case 2006–007, which addressed both contractor code of business ethics and conduct and the use of fraud hotline posters. The final rule under FAR case 2006–007 relied heavily on the Defense Acquisition Regulations System (DFARS) coverage of contractor business ethics and hotline posters (see 48 CFR 203.70 and 48 CFR 252.203–7002). The DFARS clause on hotline posters does not apply to overseas contracts or to commercial items. There is no DFARS clause on contractor code of business ethics and conduct, just recommended guidelines. When the Councils added the clause at FAR 52.203–13 to contractually require a contractor code of business ethics and conduct, the same exemptions as applied to the hotline posters were perpetuated. The proposed rule under 2007–006, which was issued on an extremely expedited basis, did not propose change to the exemption for overseas contracts that was initiated under FAR case 2006–007. After publication of the proposed rule under 2007–006, DOJ and other respondents expressed concern about the overseas exemption.

The Councils note that the proposed rule did not exempt contracts that will be performed entirely outside the United States from all the requirements of the proposed rule. The proposed rule—

- Applied the proposed debarment/suspension for knowing failure to timely disclose an overpayment on a Government contract or violations of Federal criminal law in connection with the award or performance of any

Government contract or subcontract, to all contracts, whether domestic or overseas.

• Applied the policy demanding integrity and honesty (see FAR 3.1002) to all contractors.

• Only exempted contracts to be performed entirely outside the United States from inclusion of the clause.

• Had a clause requirement for an internal control system which mandated an internal reporting mechanism by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports on any of the contractor's contracts or subcontracts, whether overseas or domestic.

(2) *Require inclusion of the clause at FAR 52.203–13 in contracts (and subcontracts) for all acquisitions of a commercial item.* However, just like small businesses, a formal business ethics awareness and compliance program and internal control system are not required in contracts and subcontracts for the acquisition of commercial items. This would have the effect of applying to contracts for the acquisition of commercial items the requirements for—

• A written code of business ethics;

• Preventing and detecting criminal conduct; and

• Notifying, in writing, when the contractor has reasonable grounds to believe that violations of the civil False Claims Act or Federal criminal law have occurred in connection with the award or performance of this contract or any subcontract thereunder.

This is in some ways more fair to contractors providing commercial items, because even though the clause was not included in contracts for the acquisition of commercial items, the contractors were still subject under the initial proposed rule to debarment or suspension for knowing failure to notify the Government of violations of Federal criminal law in connection with the award or performance of the contract (or subcontract). Now the requirement to report violations is explicitly stated in the contract.

(3) *Add a new cause for suspension or debarment to the current lists at FAR 9.407–2 and 9.406–2, respectively.* For suspension, the new cause would be adequate evidence of a knowing failure to timely disclose the violation of the civil False Claims Act in connection with the award or performance of any Government contract, or subcontract thereunder. For debarment, the new cause would be a preponderance of the evidence of a knowing failure to timely disclose violation of the civil False Claims Act (31 U.S.C. 3729–3733) in connection with the award or performance of any Government contract, or subcontract thereunder. This would also be added as a required disclosure in the contract clause.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because small businesses will be required to notify, in writing, the agency Office of the Inspector General, with a copy to the contracting officer, whenever the contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the contractor has committed a violation of the civil False Claims Act or a violation of Federal criminal law in connection with the award or performance of this contract or any subcontract thereunder.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared in connection with the initial proposed rule. The analysis is summarized as follows:

The IRFA reported that ''the clause requirements for a formal awareness/training program and internal control system will not apply to small business concerns.'' (See 72 FR 64021.) That is still true. Only the requirements of paragraph (b) of the clause will apply (to have a written code of business ethics and to notify the agency Office of the Inspector General in writing, with a copy to the contracting officer whenever the Contractor has reasonable grounds to believe that a principal, employee, agency, or subcontractor of the contractor has committed a violation of the False Claims Act or a violation of Federal criminal law).

The proposed changes that affect the IRFA are as follows:

• Applies to contracts to be performed outside the United States.

• Applies to contracts for the acquisition of commercial items (except 52.203–13(c)).

• Requires reporting of violations of civil False Claims Act.

The requirement in the proposed rule ''to notify the agency inspector general and the contracting officer in writing whenever the contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the contractor has committed a violation of Federal criminal law in connection with the award or performance of any Government contract or subcontract'' (72 FR 64020) was applicable to small, as well as large, businesses. The IRFA estimated that approximately 1,400 prime and subcontracts with small businesses would include the contract clause. We estimate that by including small businesses that offer commercial items or that perform contracts outside the United States, the number of small businesses impacted by the clause may increase by 50%. We estimate that the requirement to report violations of the civil False Claims Act may double the number of reports. The number of small businesses that would actually be required by the clause to submit a report would then be calculated as 84 ($28 \times 1.5 \times 2$). The number of small entities that are not impacted by the clause requirement but would report alleged violations of the civil False Claims Act was estimated to be 17. This estimate has doubled, because of the addition of mandatory reporting of violations of the civil False Claims Act. Therefore, the total number of small businesses submitting a report has increased from 45 to 118 (84+34).

The FAR Secretariat has submitted a copy of the amended IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts 3, 9, 12, and 52 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2007–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. Accordingly, the FAR Secretariat will submit a request for approval of a revised information collection requirement concerning Contractor Compliance Program and Integrity Reporting to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* The estimated reporting burden for a violation remains *3* hours. Based on the revised number of impacted contractors and retaining the other figures used in the initial estimate, the annual reporting burden is revised as follows:

Respondents: 284.

Responses per respondent: 1.

Total annual responses: 284.

Preparation hours per response: 3.

Total response burden hours: 852.

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *3* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 16, 2008 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control Number 9000–00XX, Contractor Compliance Program and Integrity Reporting, in all correspondence.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00XX, Contractor Compliance Program and Integrity Reporting, in all correspondence.

List of Subjects in 48 CFR Parts 3, 9, 12, and 52

Government procurement.

Dated: May 14, 2008.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 3, 9, 12, and 52 as set forth below:

1. The authority citation for 48 CFR parts 3, 9, 12, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Amend section 3.1002 by adding paragraph (c) to read as follows:

3.1002 Policy.

* * * * *

(c) A contractor may be suspended and/or debarred for knowing failure to timely disclose a violation of the civil False Claims Act or Federal criminal law in connection with the award or performance of any Government contract performed by the contractor or a subcontract awarded thereunder (see 9.406–2(b)(1)(v) and 9.407–2(a)(7)).

3. Revise paragraph (a) of section 3.1004 to read as follows:

3.1004 Contract clauses.

* * * * *

(a) Insert the clause at FAR 52.203–13, Contractor Code of Business Ethics and Conduct, in solicitations and contracts if the value of the contract is expected to exceed $5,000,000 and the performance period is 120 days or more.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

4. Amend section 9.406–2 by revising the introductory text of paragraph (b)(1) and adding paragraph (b)(1)(v) to read as follows:

9.406–2 Causes for debarment.

* * * * *

(b)(1) A contractor, based upon a preponderance of the evidence, for any of the following—

* * * * *

(v) Knowing failure to timely disclose—

(A) An overpayment on a Government contract;

(B) Violation of the civil False Claims Act (31 U.S.C 3729–3733) in connection with the award or performance of any Government contract or subcontract; or

(C) Violation of Federal criminal law in connection with the award or performance of any Government contract or subcontract.

* * * * *

5. Amend section 9.407–2 by adding paragraph (a)(7) to read as follows:

9.407–2 Causes for suspension.

(a) * * *

(7) Knowing failure to timely disclose—

(i) An overpayment on a Government contract;

(ii) Violation of the civil False Claims Act (31 U.S.C 3729–3733) in connection with the award or performance of any Government contract or subcontract; or

(iii) Violation of Federal criminal law in connection with the award or performance of any Government contract or subcontract.

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

6. Amend section 12.301 by redesignating paragraph (d)(2) as (d)(3) and adding a new (d)(2) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(d) * * *

(2) Insert the clause at 52.203–13, Contractor Code of Business Ethics and Conduct, as prescribed in 3.1004(a).

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Amend section 52.203–13 by—

a. Revising the date of clause;

b. Adding paragraph (b)(3);

c. Revising the introductory text of paragraph (c) and (c)(2)(ii);

d. Adding paragraph (c)(2)(ii)(F); and

e. Revising paragraph (d).

52.203–13 Contractor Code of Business Ethics and Conduct.

* * * * *

Contractor Code of Business Ethics and Conduct

([Insert Abbreviated Month and Year of Publication in the Federal Register])

* * * * *

(b) * * *

(3) The Contractor shall notify, in writing, the agency Office of the Inspector General, with a copy to the Contracting Officer, whenever the Contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of the civil False Claims Act or a violation of Federal criminal law in connection with the award or performance of this contract or any subcontract thereunder.

(c) *Business ethics awareness and compliance program and internal control system.* This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if 52.212–4 appears in this contract.

* * * * *

(2) * * *

(ii) At a minimum, the Contractor's internal control system shall provide for the following:

* * * * *

(F) Timely reporting, in writing, to the agency Office of the Inspector General, with a copy to the Contracting Officer, whenever the Contractor has reasonable grounds to believe that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of the civil False Claims Act (31 U.S.C 3729–3733) or a violation of Federal criminal law in connection with the award or performance of any Government contract performed by the Contractor or a subcontract thereunder.

* * * * *

(d) *Subcontracts.* (1) The Contractor shall include the substance of this clause,

including this paragraph (d), in subcontracts that have a value in excess of $5,000,000 and a performance period of more than 120 days.

(2) In altering this clause to identify the appropriate parties, all reports of violation of the civil False Claims Act or violation of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(End of clause)

[FR Doc. E8–11137 Filed 5–15–08; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0001; 92220–1113–0000–C6]

RIN 1018–AU67

Endangered and Threatened Wildlife and Plants; Proposed Removal of Erigeron maguirei From the Federal List of Endangered and Threatened Plants; Availability of Post-Delisting Monitoring Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), propose to remove the plant *Erigeron maguirei* (commonly referred to as Maguire daisy) from the List of Endangered and Threatened Plants. The best scientific and commercial data available indicate that this species has recovered and no longer meets the definition of threatened or endangered under the Act. Our review of the status of this species shows that populations are stable, threats have been addressed, and adequate regulatory mechanisms ensure the species is not currently and is not likely to again become an endangered species within the foreseeable future in all or a significant portion of its range. We seek information, data, and comments from the public regarding *E. maguirei,* this proposal to delist, and the Post-Delisting Monitoring Plan. This proposed rule completes the 5-year status review initiated on April 7, 2006 (71 FR 17900).

DATES: We will accept comments received or postmarked on or before July 15, 2008. Public hearing requests must be received by June 30, 2008.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AU67; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office, 2369 West Orton Circle, West Valley City, UT 84119, or telephone (801) 975–3330. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we hereby request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological information concerning this species;

(2) Relevant data concerning any current or likely future threats (or lack thereof) to this species, including the extent and adequacy of Federal and State protection and management that would be provided to the *Erigeron maguirei* as a delisted species;

(3) Additional information concerning the range, distribution, population size, and population trends of this species, including the locations of any additional populations of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and

(5) Our draft Post-Delisting Monitoring Plan.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment during normal business hours at the Utah Field Office, 2369 West Orton Circle, West Valley City, UT 84119 (801/975–3330).

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received by June 30, 2008. Such requests must be made in writing and addressed to the Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section).

Previous Federal Action

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27824) accepting the Smithsonian report as a petition to list taxa named therein under section 4(c)(2) (now 4(b)(3)) of the Act) and announced our intention to review the status of those plants. *Erigeron maguirei* was included in that report (40 FR 27880, July 1, 1975). Maguire daisy is the common name for *Erigeron maguirei,* however we will use primarily the scientific name of this species throughout this proposed rule to clarify taxonomic issues or the legal status of the plant.

On June 16, 1976, we published a rule in the **Federal Register** (41 FR 24524) to designate approximately 1,700 vascular plant species, including *Erigeron maguirei,* as endangered pursuant to section 4 of the Act. The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979, we published a notice of withdrawal (44 FR 70796) of that portion of the June 16, 1976, proposal that had not been made final, which included *E maguirei.*

On December 15, 1980, we published a revised notice of review for native plants in the **Federal Register** designating *Erigeron maguirei* as a candidate species (45 FR 82480). Section 4(b)(3)(B) of the 1982

amendments to the Act required that the Secretary of the Interior make a finding on a petition within 1 year of its receipt. In addition, section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending as of October 13, 1982, be treated as if newly submitted on that date. Since the 1975 Smithsonian report was accepted as a petition, all the taxa contained in those notices, including *E. maguirei,* were treated as being newly petitioned as of October 13, 1982. On October 13, 1983, the Service made a 12-month finding that the petition to list *E. maguirei* var. *maguirei* was warranted but precluded by other listing actions of a higher priority. Notification of this finding was published in the **Federal Register** on November 28, 1983 (48 FR 53640).

On July 27, 1984, the Service published a proposed rule to designate Erigeron *maguirei* var. *maguirei* as an endangered species (49 FR 30211). The final rule designating the variety of the species as endangered was published on September 5, 1985 (50 FR 36089).

In 1983, *E. maguirei* var. *harrisonii* was described as a separate variety of *E. maguirei.* In this description, Welsh (1983a, p. 367) noted two previous collections of the variety at canyon bottom sites in Wayne County, Utah, in the 1930s. On September 27, 1985, the Service published a notice of review for plants (50 FR 39526) which included *Erigeron maguirei* var. *harrisonii* as a candidate species (50 FR 39548). *Erigeron maguirei* var. *harrisonii* remained as a candidate through the revised plant notice of review published on September 30, 1993 (58 FR 51144).

On September 7, 1994 (59 FR 46219), the Service proposed to reclassify the species from endangered to threatened based on the new genetic information that led to a taxonomic revision, changing the entry for *Erigeron maguirei* var. *maguirei* to *E. maguirei.* The proposed rule noted that this entity also included the plant variety formerly known as *E. m.* var *harrisonii*.

On June 19, 1996, the Service finalized the rule reclassifying Maguire daisy from endangered to threatened in large part due to a taxonomic revision and resultant increase in the population considered as *Erigeron maguirei* (61 FR 31054).

Species Information

A member of the sunflower family, *Erigeron maguirei* is a perennial herb with a branched woody base. Its stems and spatulate-shaped leaves are densely spreading and hairy. Its flowers are dime sized with white or pink petals. Bits of sand commonly cling to the hairs of the leaves and stems. The species is further described in our June 19, 1996, final rule reclassifying the species as threatened (61 FR 31054).

Erigeron maguirei has been located from 1,585 to 2,621 meters (m) (5,200 to 8,600 feet (ft)) in elevation (Clark et al. 2006, pp. 9–11). Highest plant densities occur on mesa tops between 1,829 and 2,134 m (6,000 and 7,000 ft) in elevation (Kass 1990, p. 27; Service 1995, p. 2; Clark 2001, p. 15; Clark et al. 2006, p. 14).

The species occurs from the San Rafael Swell in Emery County, Utah, south into Wayne and Garfield Counties, Utah, through the Waterpocket Fold in Capitol Reef National Park (Capitol Reef) (Heil 1987, p. 5, figure 5; Heil 1989, p. 26; Kass 1990, pp. 23, 26–27; Harper and Van Buren 1998, appendix A; Clark 2001, p. 3; Clark 2002, pp. 13–14; Clark et al. 2005, p. 7; Clark et al. 2006, p. 7) (see Figure 1). *Erigeron maguirei* occurs primarily on the Navajo Sandstone formation. Individuals have been located within steep, narrow, dry, rocky, and sandy canyon or wash bottoms of the Wingate, Chinle, and Navajo Sandstone formations; sandstone walls of the Wingate, Navajo, and Cutler formations; cracks of large boulders; slickrock; and atop mesas of the Navajo Sandstone formation (Cronquist 1947, p. 165; Anderson 1982, pp. 1–2; Heil 1989, pp. 25–26; Kass 1990, p. 22; Harper and Van Buren 1998, p. 1). Populations within canyon bottoms are apparently established from seeds dispersed by wind or overland flow from source populations on the mesa tops (Heil 1989, p. 25; Kass 1990, p. 27; Service 1995, p. 2). These canyon populations are generally small compared with those on the mesa tops (Heil 1989, p. 25; Kass 1990, p. 27; Service 1995, p. 2).

BILLING CODE 4310–55–P

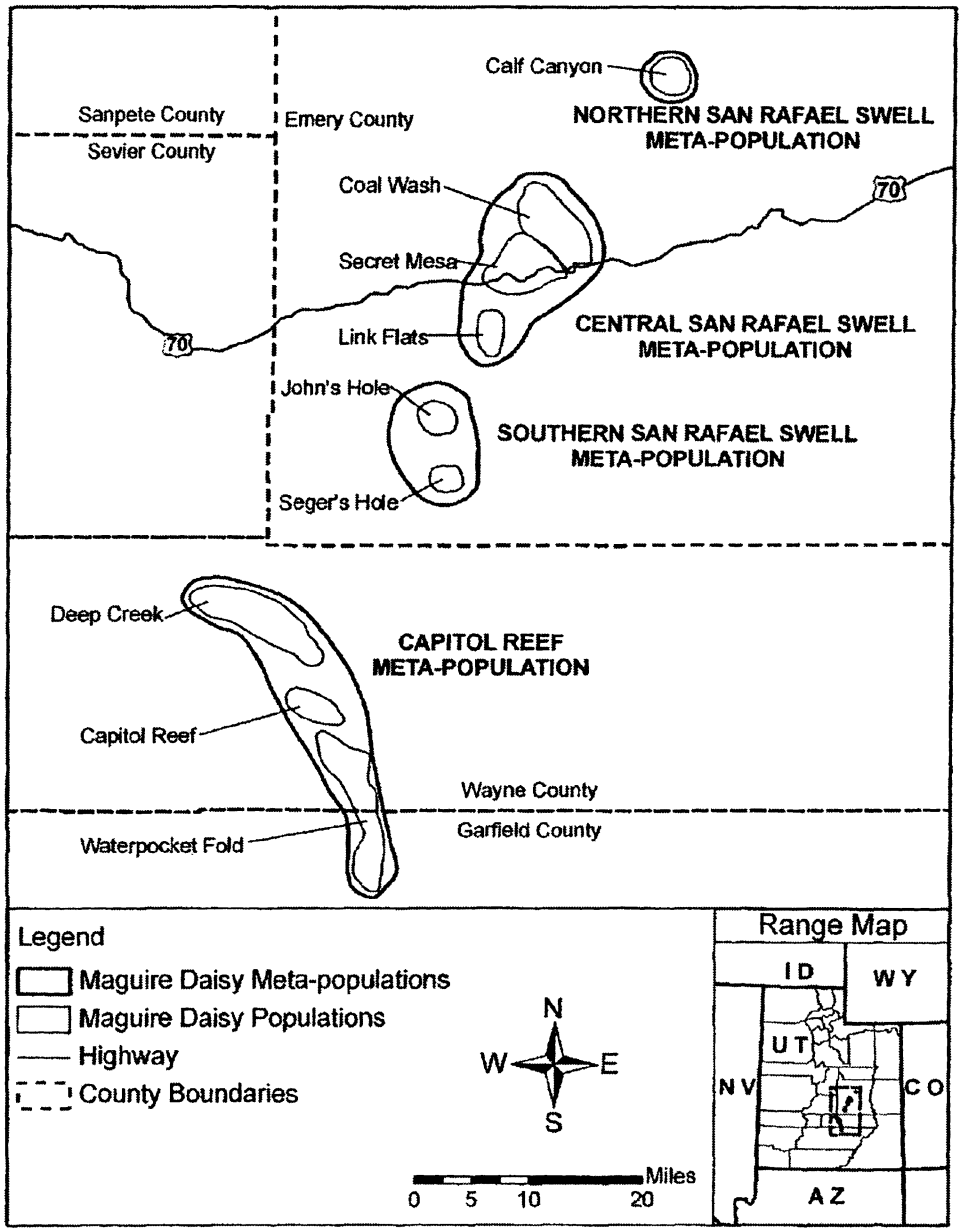

Figure 1. Erigeron maguirei Range (Clark et al. 2006, pp. 8-9)

BILLING CODE 4310–55–C

Erigeron maguirei has been found primarily in the Dwarf Mountain Mahogany Slickrock plant community, a community endemic to the Colorado Plateau Region (Heil 1989, p. 23; Clark 2001, pp. 15–16; Clark et al. 2006, p. 15). *E. maguirei* also is associated with pinyon/juniper—tall shrub, ponderosa pine—tall shrub slickrock pockets, mesic canyon bottoms, mountain shrub, and intermittent riparian communities (Kass 1990, p. 22; Harper and Van Buren 1998, p. 1; Clark 2002, pp. 15–16; Clark et al. 2005, p. 7; Clark et al. 2006, p. 15).

Flowering occurs from May to June and takes 4 to 6 weeks to go from the small green ''button'' bud stage to completion of anthesis, when the flower is no longer open and functional (Alston and Tepedino 2005, p. 54; Clark et al. 2006, p. 17). It appears that *Erigeron maguirei* lacks self-compatibility, and that pollinators are necessary for cross pollination to occur (Alston and Tepedino 2005, p. 61). Because of the open nature of the flower head, *E. maguirei* tends to be visited by opportunistic insects searching for nectar (Alston and Tepedino 2005, p. 60). Pollinators include various flies, wasps, and bees (Alston and Tepedino 2005, p. 60).

Van Buren and Harper (2002, p. 1) collected demographic data on three *Erigeron maguirei* populations for a period of 9 years. The demographic data collected included plant diameter, size class, plant height, plant condition, and number of flower heads produced for individual tagged plants (Van Buren and Harper 2002, p. 2). At the Eagle Canyon study site, 124 plants were tagged in 1992 and 41 of these were still alive in 2001 (Van Buren and Harper 2002, pp. 2–3). This demographic monitoring study suggests the species is long lived, has a low mortality rate, and has the ability to replace individuals at a rate that compensates for mortality (Van Buren and Harper 2002, pp. 2–5). Overall, monitored populations appear stable (Van Buren and Harper 2002, p. 2).

Recovery

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that the threats have been minimized sufficiently, and the species is robust enough to reclassify from endangered to threatened or to delist. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The Maguire Daisy (*Erigeron maguirei*) Recovery Plan was approved by the Service on August 15, 1995. The Recovery Plan outlined three delisting criteria. These criteria, and the status of the species relative to these criteria, are outlined below.

Delisting Criterion One—Locate and/or establish additional populations. Maintain 20 populations which have been demonstrated to be above minimum viable population levels. Until minimum viable population levels are determined, it is assumed that the minimum viable population level will be about 500 individuals (Service 1995, p. ii). At the time the Recovery Plan was written, the species was known from 7 populations (32 sites) with the total population estimated at 5,000 (Service 1995, p. 2). To achieve this criterion, the Recovery Plan recommended land managers inventory suitable habitat to determine with a reasonable degree of accuracy its population and distribution (Service 1995, pp. ii, 6, 7, 12).

Thus, in 1999, the Service, the Bureau of Land Management (BLM), U.S. Department of Agriculture Forest Service (Forest Service), and the National Park Service (NPS) established an Interagency Rare Plant Agreement to direct conservation measures for listed and sensitive plant species endemic to central Utah, including *Erigeron maguirei* (Clark 2002, p. 3). Through this interagency agreement, the agencies committed funding to survey and monitor *E. maguirei* throughout its range, regardless of agency boundaries (Clark 2002, p. 3). Beginning in 1999, these agencies hired an Interagency Botanist to oversee a team of seasonal employees, thus creating an Interagency Rare Plant Team (Forest Service et al. 2006, p. 6). As part of recovery activities for the *E. maguirei,* from 1999 to 2002, approximately 3,521 hectares (8,700 acres) were surveyed for *E. maguirei* on NPS, BLM, and Forest Service lands (Clark and Clark 1999, p. 45; Clark 2002, p. 13). During this period, approximately 2,445 person-hours were allocated by the Interagency Rare Plant Team for *E. maguirei* surveys (Clark 2002, p. 13).

The recovery criterion of maintaining 20 viable populations was based primarily on the assumption that numerous small sites would remain scattered and disconnected (Clark 2006c). Instead of identifying more populations, increased survey efforts conducted under Action 2.0 in the Recovery Plan identified both broader plant distributions and larger population sizes that are evenly distributed across the landscape (Harper and Van Buren 1998, p. 2; Clark and Clark 1999, p. 47; Clark 2001, p. 3; Clark 2002, pp. 13–14; Clark et al. 2005, p. 17; Clark et al. 2006, p. 17). Based on our current knowledge of the species, 9 known populations exist (118 sites) within 4 meta-populations comprised of approximately 164,250 *Erigeron maguirei* individuals (see Figure 1 and Table 1) (Clark et al. 2006, p. 16). *Sites* are defined as occurrence locations recorded by one or more researcher over time (Clark 2006b, p. 5). *Populations* are defined as groups of occurrence records (i.e., sites) located in the same geographic vicinity (Clark 2006b, p. 5). A *meta-population* is comprised of a number of individual populations less than 2.4 kilometers (1.5 miles) apart, typically linked by continuous suitable habitat (Clark 2006b, p. 5, Clark 2006c). The populations cannot be split into more than nine separate populations based on any meaningful criteria (Clark 2006c).

The range of the species is currently estimated at approximately 1,010 square kilometers (km) (390 square miles (mi)) and extends from the San Rafael Swell south through the Waterpocket Fold of Capitol Reef (see Figure 1) (Clark et al. 2006, p. 17). All three populations within the Capitol Reef Meta-Population are linked by contiguous suitable habitat. Although not necessary for recovery, Clark et al. (2006, p. 24) postulated that further survey work would likely find sufficient numbers of plants to link them into one contiguous population. A similar situation exists within the San Rafael Swell area where suitable habitat occurrences are separated by short distances (Clark et al. 2006, p. 24).

These large, connected, and evenly distributed populations provide the desired viability intended by the recovery plan. The 9 populations have more desirable biological attributes than the originally suggested 20 populations in the recovery plan. As mentioned above, the need for 20 populations was based on the assumption that the originally identified localities would remain widely scattered and the populations in those localities would remain small. However, the 9 current populations are well connected within 4 meta-populations, the meta-populations are distributed throughout the range of the species, and most of the populations within those meta-populations have large numbers of individuals. In fact, most of the populations are well above the minimum viable population size of 500 (see Table 1). Although some of the individual populations are below the minimum viable population size, those populations are connected to other populations within meta-populations, thereby increasing the species' robustness. In addition, recent population dynamics studies confirm the species' projected population stability (Van Buren and Harper 2002, pp. 1–5; Clark et al. 2006, p. 24). Demographic monitoring data suggests the species is long lived, has a low mortality rate, and has the ability to replace individuals at a rate that compensates for mortality (Van Buren and Harper 2002, pp. 2–5). The 9 current populations are functionally better than the estimated 20 populations originally identified in the recovery plan. Therefore, on the whole, the available data demonstrate that the intent of this recovery criterion has been met or exceeded.

TABLE 1.—ERIGERON MAGUIREI POPULATIONS, POPULATION ESTIMATES AND PROTECTIVE LAND MANAGEMENT DESIGNATIONS

Population	Population estimate	Number of sites	Land ownership **	Protective designations **	Percent of the species' range within the protective designation
Northern San Rafael Swell Meta-Population					
Calf Canyon *	2,000	1	BLM	ACEC	95
		2	SITLA	None	0
Central San Rafael Swell Meta-Population					
Coal Wash	100	6	BLM	WSA	90
				ACEC	100
Secret Mesa	9,000	9	BLM	WSA	90
				ACEC	100
	1,000	2	SITLA	None	0
Link Flats	200	4	BLM	None	0
	50	1	SITLA	None	0
Southern San Rafael Swell Meta-Population					
John's Hole	300	3	BLM	WSA	100
				ACEC	10
Seger's Hole	100	2	BLM	WSA	50
				ACEC	20
Capitol Reef Meta-Population					
Deep Creek	1,500	2	Forest Service	Proposed Botanical Area	[1]
	100,000	29	NPS	Primitive and Threshold Management Zone.	100
Capitol Reef	30,000	15	NPS	Primitive and Threshold Management Zone.	100
Waterpocket Fold	20,000	42	NPS	Primitive and Threshold Management Zone.	100
Totals	164,250	118	Various	Various	97

* The Calf Canyon population estimate is from 1980. Due to inaccessibility, this site has not been revisited since 1980 and current population levels are unknown. However, other populations are doing well and there is no reason to believe that the Calf Canyon population is not also doing well (Clark 2007a). Current distribution among BLM and SITLA is also unknown although 1980 estimates suggest 25 percent of the range was on BLM land and 75 percent was on SITLA land.

** SITLA = Utah's School of Public Land Trust; ACEC = Area of Critical Environmental Concern; WSA = Wilderness Study Area.

[1] 0% (will be 100% if proposed Botanical Area is finalized).

Delisting Criterion Two—Establish formal land management designations for these populations which provide long-term, undisturbed habitat for Maguire daisy (Service 1995, p. ii). Delisting Criterion Three—Ensure that Maguire daisy and its habitat is protected from loss of individuals and environmental degradation (Service 1995, p. ii). To achieve these criteria, the Recovery Plan recommends the Service and our partners ''document the presence of, or, if necessary, establish formal land management designations which would provide for long-term protection for Maguire daisy and its habitat'' (Service 1995, pp. ii, 6, 9, 12).

Approximately 97 percent of the species' range occurs on lands with substantial protective measures in place (see Table 1). Protections are afforded to populations occurring in Capitol Reef through the NPS General Management Plan (Capitol Reef 1998, pp. 27–31). The BLM provides protections for populations occurring on their lands under the 1991 San Rafael Resource Management Plan (BLM 1991a, pp. 12–26, 63–64). Most of the habitat on BLM land is protected as Wilderness Study Areas or Areas of Critical Environmental Concern (see Factor D below). The BLM Price Field Office is currently proceeding with a revision of the 1991 Resource Management Plan (BLM 2004). The Record of Decision for the Final Resource Management Plan is scheduled to be completed by the summer of 2008 (BLM 2008a, p. 1). The Dixie National Forest and Fishlake National Forest released a draft Land Management Plan identifying the Billings Pass Botanical Area, which would provide protection to *Erigeron maguirei* (Forest Service 2006a, pp. 2c–17, 2c–18, 2c–43; Tait 2006). At the time of this proposed rule, a schedule was not available for the completion of this document. The Fishlake National Forest Off-Highway Vehicle Route Designation Project (Forest Service 2006b, pp. 13, 20–21) will eliminate cross country travel on Forest Service lands throughout the range of the species; all habitat is a minimum of 0.8 km (0.5 mi) from existing or potential motorized routes on Fishlake National Forest lands (Forest Service 2006c, pp. 123, 260–263).

The Utah State School and Institutional Trust Lands (SITLA) owns lands that contain less than 2 percent of all known or estimated *Erigeron maguirei* plants. While SITLA does not have a specific management plan to benefit *E. maguirei*, we do not believe this is necessary to achieve the recovery criterion.

Since its 1985 listing, Federal land management agencies have worked collaboratively to ensure long-term protection of *Erigeron maguirei* and its habitat. Land management plans, policies, and regulations that provide protection to *E. maguirei* are in place. More information regarding the protection of *E. maguirei* through land management designations is contained within Factor D of the Summary of Factors Affecting the Species.

To further ensure these efforts continue post-delisting, the Interagency Rare Plant Team has developed the Central Utah Navajo Sandstone Endemics Conservation Agreement and Conservation Strategy (hereafter referred to as the Conservation Strategy), a multi-year joint project by the Forest Service, BLM, NPS, and the Service (Forest Service et al. 2006). We believe the Conservation Strategy will ensure conservation efforts that have occurred for the species since formation of the Interagency Rare Plant Team in 1999 will continue. The Conservation Strategy, signed by the Forest Service, BLM, NPS, and the Service in September 2006, outlines the procedural provisions under which the Federal agencies will manage *Erigeron maguirei* into the foreseeable future (Forest Service et al. 2006, pp. 24–25). In addition, the Conservation Strategy documents the conservation actions needed to manage potential factors impacting the species and to promote the conservation and perpetuation of *E. maguirei* (Forest Service et al. 2006, pp. 38–47). The Conservation Strategy can be viewed in its entirety at: *http://mountain-prairie.fws.gov/species/plants/maguiredaisy/*. Copies can also be obtained from the Utah field office (see **FOR FURTHER INFORMATION CONTACT**).

Based on the best available data, we have determined that the intent of the first criterion has been achieved and the second and third recovery criterion have been met. Current estimates suggest approximately 97 percent of all known individuals occur on lands with formal land management designations that provide for the long-term protection of the habitat. This ensures *Erigeron maguirei* and its habitat are protected from loss of individuals and environmental degradation.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened (as is the case with the Maguire daisy); and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the significant portion of its range (SPR) phrase refers to the range in which the species currently exists. For the purposes of this analysis, we will evaluate whether the currently listed species, the *Erigeron maguirei*, should be considered threatened or endangered. Then we will consider whether there are any portions of the species' range in danger of extinction or likely to become endangered within the foreseeable future.

Foreseeable future is determined by the Service on a case-by-case basis, taking into account a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat-projection timeframes, and environmental variability. In this case, we do not foresee any significant changes in the level of threats for *Erigeron maguirei*. Land management designations (described below) provide long-term security for approximately 97 percent of known plants. Other factors once thought capable of significantly impacting the species are now predicted to have little or no impact on the species' long-term conservation status. While we could consider the species secure in perpetuity, such a timeframe would introduce an unreasonable level of uncertainty into our analysis. Therefore, for the purpose of our analysis, we consider a timeframe over which it would be reasonable to expect population level or demographic effects to be detected. For the purposes of this proposed rule, we consider ''foreseeable future'' for *E. maguirei* to be up to 30 years. The species has been shown to live past 9 years of age and may live between 20 and 30 years (Van Buren and Harper 2002, appendices; England 2007). The available data also demonstrate that plants may begin flowering as early as 1 year and may be able to replace themselves within as little as 2 years, depending upon conditions (Van Buren and Harper 2002, appendices). Consideration of factors potentially impacting the species for up to 30 years would incorporate the long life of an individual and allow for up to 15 possible generations. We believe this represents a reasonable biological timeframe to measure demographic changes that could reflect potential threat factors.

The following analysis examines all five factors currently affecting, or that are likely to affect, *Erigeron maguirei* within the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The current range of *Erigeron maguirei* includes 9 populations (118 sites) within 4 meta-populations across approximately 1,010 square km (390 square mi) of southeastern Utah. These populations extend from the San Rafael Swell south through the Waterpocket Fold of Capitol Reef (see Figure 1) (Clark et al. 2006, p. 17). The three largest populations, including over 91 percent of all known plants, occur primarily within Capitol Reef. One of these three populations (Deep Creek) also includes a small portion, less than 1 percent of all the known plants, on National Forest lands. The other six populations (Calf Canyon, Coal Wash, Secret Mesa, Link Flats, John's Hole, and Seger's Hole) are managed primarily by the BLM. A portion of three of these six populations (Calf Canyon, Secret Mesa, and Link Flats) also occurs on Utah's School of Public Land Trust (SITLA) lands. Table

1 provides further detail on populations and land ownership.

When the species was originally listed, the main threat was loss of habitat specifically due to mining claims for uranium, energy exploration, grazing, and off-road vehicle recreation (50 FR 36089–36091, September 5, 1985). In addition, flooding has also been seen as a potential threat in the recent years. We address these threats to *Erigeron maguirei* below.

Mineral Exploration and Development Overview—Mineral exploration and development were listed as threats in the 1985 listing, in the 1995 Recovery Plan, and in the 1996 downlisting (50 FR 36089, September 5, 1985; Service 1995, p. 5; 61 FR 31054, 31056, June 19, 1996). Only one active mine exists within the range of *Erigeron maguirei* populations according to the Utah Mineral Occurrence System (Utah Geological Survey (UGS) 2007; Clark et al. 2006, p. 9). This mine, the Lucky Strike Mine, is discussed below.

Uranium—Uranium mining began in the western United States in 1871 (Ringholz 1994, p. 2). In 1952, geologist Charles Steen found the first noteworthy deposits of uranium ore in Utah (Ringholz 1994, p. 2). By the end of 1962, Utah had produced approximately 9 million tons of ore (Ringholz 1994, p. 2). The Atomic Energy Commission held ample uranium ore reserves and by 1970 stopped buying uranium (Ringholz 1994, p. 3). When nuclear power plants came on-line in the mid-1970s, a brief second boom was experienced (Ringholz 1994, p. 3). However, foreign competition, Federal regulations, and nuclear fears led to an abandonment of domestic uranium mining (Ringholz 1994, p. 3). A recent surge in prices has led to a resurgence in prospectors staking and buying up uranium claims.

According to the Utah Mineral Occurrence System database, 12 known uranium mineral locations overlap the mapped *Erigeron maguirei* populations (UGS 2007; Clark et al. 2006, p. 16). Only the Lucky Strike Mine is active (UGS 2007). This mine occurs along the southern edge of the mapped Link Flats population (Central San Rafael Swell Meta-Population) and is accessed via an existing road that enters the population from the south (UGS 2007; Clark et al. 2006, p. 9). It is not anticipated that the mine will adversely impact substantial portions of this population in the foreseeable future as it lies on the periphery of the population and is accessed via an existing road. The remaining 11 locations include 6 sites that never produced and 5 sites that only reached small production levels (UGS 2007). All 11 of these locations occur on the periphery of the mapped populations (UGS 2007; Clark et al. 2006, p. 16).

Uranium is restricted to geologic formations such as the Moss Back Member, Monitor Butte Member, and the Mottled Siltstone Unit of the Chinle Formation, while the Maguire daisy primarily occurs in the Navajo Sandstone geologic formation. The most substantial impact of uranium mining would likely be indirectly from crossing suitable habitat while accessing the desired geologic formation (Utah Geologic Survey (UGS) 2007; Clark et al. 2006, p. 20). Based on the locations of past exploration coupled with the geologic requirements of uranium, we foresee minimal potential impacts from uranium mining to the species as a whole in the foreseeable future.

Gypsum—Although not specifically mentioned in any previous Service threats assessment, gypsum mining also occurs in the vicinity of *Erigeron maguirei*. While *E. maguirei* does not occur in the geologic formation that contains commercial quality gypsum, suitable habitat may be crossed while accessing the more desirable geologic formations (Clark et al. 2006, p. 20). According to the Utah Mineral Occurrence System database, one gypsum occurrence that never produced lies within the mapped Deep Creek population within Capitol Reef (UGS 2007). This occurrence is located on the periphery of the mapped population and within the Primitive Management Zone (Capitol Reef 1998, p. 27; UGS 2007). NPS regulations protect this population by limiting access (Capitol Reef 1998, p. 27). Travel through this Management Zone is limited to cross-country hiking or horseback riding on unimproved trails and routes (Capitol Reef 1998, pp. 28–29). Within the Primitive Management Zone, developments are not permitted and physical modifications are not allowed except for natural or cultural resource protection (Capitol Reef 1998, p. 29). More importantly, lands are withdrawn from mining and mineral exploration in Capitol Reef (Clark et al. 2006, p. 21). Therefore, gypsum mining impacts to the *E. maguirei* are not likely in the foreseeable future.

Oil Shale and Tar Sands—The Conservation Strategy does not recognize oil shale and tar sands as a threat (Forest Service et al. 2006, p. 37). However, the mapped populations of Calf Canyon, Secret Mesa, and Link Flats overlap the mapped tar sand areas as depicted on the Energy Resources Map of Utah (Automated Geographic Reference Center (AGRC) 2001a, 2001b; Clark et al. 2006, p. 9). Tar sands are a mixture of sand or clay, water, and extremely heavy crude oil. Typically, strip mining is the most efficient method of extraction, but other approaches include the injection of steam and/or solvents to reduce the oils viscosity allowing the oil to be pumped out of the well.

Ten percent of the mapped Calf Canyon population overlaps that of the mapped high probability tar sand areas and probable tar sand areas (AGRC 2001b; Clark et al. 2006, p. 9). The Secret Mesa population contains a small area of tar sands (AGRC 2001a; Clark et al. 2006, p. 9). The Link Flats population contains a small area of tar sands, and approximately 2 percent of the mapped area overlaps that of the mapped probable and highly probable tar sand areas (AGRC 2001a, 2001b; Clark et al. 2006, p. 9). Portions of the mapped Calf Canyon, Secret Mesa, and Link Flats populations have been identified in the Draft Oil Shale and Tar Sands Resource Management Plan Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement (BLM 2007, pp. 3–127 and 3–163; Clark et al. 2006, p. 9). The purpose of the draft programmatic Environmental Impact Statement is to describe where oil shale and tar sands resources are present, and to decide which areas will be open to application for commercial leasing, exploration, and development (BLM 2007, pp. 1–2). The final Programmatic Environmental Impact Statement is expected to be published in 2008 (BLM 2008b). A final determination on this proposed delisting rule will not be completed until the programmatic Environmental Impact Statement is finalized; and the Record of Decision will be analyzed as part of our final determination. If tar sands development does occur in the San Rafael Swell area, the loss of significant portions of these populations from this activity is not anticipated because the mineral resources occur along the periphery of the mapped populations and only contain a small percentage of the mapped area.

Impacts to individual plants from tar sands development may still occur. These impacts can be a result of vegetation clearing, habitat fragmentation, alteration of topography, changes in drainage patters, erosion, sedimentation from runoff, oil and contaminant spills, fugitive dust, injury or mortality of individual plants, human collection, increased human access, spread of invasive plant species, and air pollution (BLM 2007, pp. 5–77). In addition, we believe the development of

tar sands may also impact pollinator species. Given where development is likely to occur and the locations of where plants occur, we expect impacts to the species to be minor.

Additionally, protective land management designations apply to the Secret Mesa population. Ninety percent of the BLM portion of the mapped Secret Mesa population occurs within Sid's Mountain and Devils Canyon WSAs (Clark et al. 2005, pp. 16–17; Ivory 2006). As stated previously, WSAs are designated as primitive-class areas and are to be managed free of evidence of human use and to maintain an environment of isolation (BLM 1991a, p. 89). Only temporary uses, and those that create no new surface disturbance nor involve permanent placement of structures, are permitted within WSAs (BLM 1976, p. 2). All WSAs are closed to use and development of minerals (BLM 1991a, pp. 19, 64).

Oil and Gas Exploration and Development—Oil and gas exploration and development were listed as threats in the listing rule, Recovery Plan, and downlisting rule (50 FR 36089, September 5, 1985; Service 1995, p. 5; 61 FR 31054, 31056, June 19, 1996). Oil and gas leases were located in the area of the last known *Erigeron maguirei* site at the time of the 1985 listing (50 FR 36090, September 5, 1985).

Lands within Capitol Reef have been withdrawn from oil and gas exploration and development (Forest Service et al. 2006, p. 56). The BLM and Forest Service lands are open to oil and gas leasing, but the potential for oil and gas is low in the Navajo Sandstone formation where *Erigeron maguirei* occurs (Forest Service et al. 2006, p. 34).

Within BLM-administered mineral resources, oil and gas leases that were issued prior to the BLM Resource Management Plan are managed under the stipulations that were in effect when the lease was issued (BLM 1991a, p. 11). Any leases issued after the Plan was signed must comply with the Resource Management Plan (BLM 1991a, p. 11, map 5). The Plan identifies specific management prescriptions by ACEC (BLM 1991a, pp. 14–15). The known *Erigeron maguirei* populations on BLM administered lands occur within the San Rafael Canyon (middle portion), Sid's Mountain, Highway I–70 Scenic Corridor, Muddy Creek, and Seger's Hole ACECs (Clark et al. 2005, pp. 16–17; Ivory 2006). The San Rafael Canyon ACEC (middle portion) is open to leasing, but surface restrictions apply (BLM 1991a, p. 14). According to the Conservation Strategy, BLM will adjust surface disturbance locations to avoid *E. maguirei* for discretionary and leasable minerals including the San Rafael Canyon ACEC (middle portion) (Forest Service et al. 2006, pp. 34, 36–38, 42–44). The remaining ACECs that contain *E. maguirei* populations have no-surface-occupancy stipulations for oil and gas development attached to the lease (BLM 1991a, p. 14). Leasing with ''no surface occupancy'' means that there will be no development or disturbance whatsoever of the land surface, including establishment of wells or well pads, and construction of roads, pipelines, or powerlines. WSAs with *E. maguirei* populations, including the Sid's Mountain, Devils Canyon, and Muddy Creek WSAs, are open for leasing, but also have no-surface-occupancy stipulations (BLM 1991a, pp. 14, 64).

Seven wells have been sited within the mapped Secret Mesa and Coal Wash populations, but all of them have been plugged and abandoned (Clark et al. 2006, p. 9; Utah Division of Oil, Gas, and Mining (UDOGM) 2006a). While limited exploration has occurred, no known oil or gas fields exist within the known *Erigeron maguirei* populations and the potential for development is low (AGRC 2001c; Clark et al. 2006, p. 21; UDOGM 2006b, Forest Service et al. 2006, p. 34). The only gas field in the vicinity of the *E. maguirei* is the Last Chance Gas Field located approximately 11 km (7 mi) west of the Seger's Hole population and 10 km (6 mi) north of the Deep Creek population (AGRC 2001c; Chidsey et al. 2005; Clark et al. 2006, p. 16; UDOGM 2006b). Based on the lack of supporting evidence of viable oil and gas fields within the vicinity of the *E. maguirei* and the land management designations affording protections to the species, oil and gas exploration and development is no longer considered a threat, nor is it likely to become one within the foreseeable future.

Recreational Use—Recreational use, including off-road vehicles and human foot traffic, have previously been cited as threats to the species (50 FR 36090, September 5, 1985; Service 1995, p. 5; 61 FR 31056, June 19, 1996). *Erigeron maguirei* habitat does not occur within 0.8 km (0.5 mi) of classified or potentially designated motorized routes on Fishlake National Forest lands (Forest Service 2006c, pp. 123, 260–263). According to the Fishlake National Forest Off-Highway Vehicle Route Designation Project, it is unlikely that motorized traffic would infringe upon the *E. maguirei* population on Forest Service land, thereby, providing protections from this threat to this portion of the species' range (Forest Service 2006c, p. 263). Capitol Reef, which comprises 91 percent of the species' total population, is closed to off-road vehicle use (Clark et al. 2006, p. 20).

Almost 6 percent of individual plants occur on lands administered by the BLM, of which approximately 80 percent occur within an ACEC and/or WSA (Kass 1990, p. 23; BLM 1991a, pp. 63–64; Clark et al. 2006, p. 18; Ivory 2006). Four of the six *Erigeron maguirei* populations that occur on BLM lands are within the Sid's Mountain, Muddy Creek, and Devils Canyon WSA (Kass 1990, p. 23; Clark et al. 2005, p. 19; Ivory 2006). These WSAs are either closed to motorized vehicles or use is limited to designated roads and trails (BLM 1991a, pp. 63–64, 68, 89; Clark et al. 2006, p. 20). San Rafael Canyon (middle portion), Sid's Mountain, Highway I–70 Scenic Corridor, Muddy Creek, and Seger's Hole ACECs contain five of the six known populations on BLM lands (Clark et al. 2005, pp. 16–17; Ivory 2006). These areas have either been closed to off-road vehicle use or use has been limited to designated roads and trails (BLM 1991a, p. 68).

Erigeron maguirei is not prone to human disturbance because it grows primarily in cliff crevices and on sandstone domes (Clark 2002, p. 16). From 2000 to 2002, 60 sites were included within a Capitol Reef study on signs of human impacts (Clark 2002, pp. 12–16). Only 2 of these sites showed any signs of human impacts (in both cases foot traffic through the site) (Clark 2002, pp. 15–16). At one site monitored with an electronic counter, visitor use remained fairly stable at 10 visitors per week (Clark et al. 2006, p. 21). After over a decade of monitoring, human trampling may have impacted some individuals, but has not led to a reduction in population survivability (Clark et al. 2006, p. 21). Therefore, impacts from recreation are not a threat to *E. maguirei* populations in the foreseeable future.

Floods—Two of four Capitol Reef sites monitored between 1992 and 2001 have experienced flash flood events (Van Buren and Harper 2002, p. 1). At one site, a flash flood event likely resulted in 48 plants being lost (Van Buren and Harper 2002, p. 2). However, the species is long lived and shows an ability to replace individuals lost to periodic flooding (Van Buren and Harper 2002, pp. 4–5). Therefore, flood events possessing the potential to meaningfully impact *Erigeron maguirei* populations are unlikely in the foreseeable future.

Summary of Factor A—Mineral exploration and development, and recreational use were listed as threats to *Erigeron maguirei* in the 1985 listing

rule, 1995 Recovery Plan, and 1996 downlisting rule (50 FR 36089, September 5, 1985; Service 1995, p. 5; 61 FR 31054, June 19, 1996). Since the last Federal action, recovery efforts have increased our understanding of the species, its habitat, and its distribution and abundance (61 FR 31054–31058, June 19, 1996; Harper and Van Buren 1998, p. 2; Clark and Clark 1999, p. 47; Clark 2001, p. 3; Clark 2002, pp. 13–14; Clark et al. 2005, p. 17; Clark et al. 2006, p. 17). The species occurs predominantly within the Navajo Sandstone formation, which has low potential for oil and gas development and uranium mining (Forest Service et al. 2006, p. 37). Most mineral resources (like gypsum, tar sands, and oil shale) occur on the periphery of mapped populations and, therefore, are not likely to meaningfully impact any of the populations. Impacts from fragmentation are also expected to be minor. Land management protections throughout most of the species' range and an increased understanding of the species' habitat have reduced the threat of recreational use. While potential impacts to individuals could occur when either accessing the mineral resources or during recreational use, these activities are considered unlikely to materialize in a meaningful way in the foreseeable future, would be limited to small periphery portions of populations, and would not reduce the long-term viability of any of the populations. In addition, land management designations, which have been discussed briefly in this section and will be discussed in more detail under Factor D, will continue to provide protections for *E. maguirei* and its habitat in the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Erigeron maguirei is not a highly collected or sought-after species. One group was known to be propagating *E. maguirei* for private use (a European group was propagating *E. maguirei* for rock garden enthusiasts) (Forest Service et al. 2006, p. 35; Clark 2007b), but no longer appears to be offering plants for sale (Megown 2007). To date, unauthorized plant and seed collection has not been documented for this species (Forest Service et al. 2006, p. 35). Although the Interagency Rare Plant Team working under the Conservation Strategy will continue to monitor for illegal collection activity (Forest Service et al. 2006, p. 35), we do not believe overutilization to be a current threat to the species, nor likely to be in the foreseeable future.

C. Disease or Predation

At the time of listing, plants were observed only in rocky areas inaccessible to cattle grazing (50 FR 36090, September 5, 1985), and not in canyon bottoms where plants were originally located in 1940 and 1980. Because the plants could not be relocated in the canyon bottoms, scientists believed that predation due to cattle grazing had reduced the species' distribution (50 FR 36090, September 5, 1985; 61 FR 31056, June 19, 1996; Harper and Van Buren 1998, p. 2). By the time the Recovery Plan was drafted, it concluded that the majority of the *Erigeron maguirei* populations were relatively secure from direct impacts of livestock trampling, but it could be a localized threat in some areas (Service 1995, p. 5). We concluded in the final downlisting rule that concentrations of livestock in localized areas, specifically wash bottoms that have limited vegetation, may result in *E. maguirei* being grazed by livestock (61 FR 31056, June 19, 1996; Kass 1990, p. 28). The species is now known to prefer cliffs or rock crevices that are inaccessible to livestock (Kass 1990, p. 27; Service 1995, p. 2; Clark 2001, p. 15; Clark et al. 2005, pp. 12, 22, 24; Clark et al. 2006, pp. 21–22; Forest Service et al. 2006, p. 56). *Erigeron maguirei* plants within canyon bottoms are small, incidental occurrences, apparently established from seeds dispersed by wind or overland flow from source populations on the mesa tops (Heil 1989, p. 25; Kass 1990, p. 27; Service 1995, p. 2).

Although seven of the nine *Erigeron maguirei* populations occur within cattle allotments, all seven of these populations are inaccessible to cattle grazing due to terrain conditions (Forest Service et al. 2006, p. 56). Of the two remaining populations, the Waterpocket Fold population in Capitol Reef, estimated at approximately 20,000 individuals on 42 sites, has a history of cattle trailing (Forest Service et al. 2006, p. 56). Cattle trailing, or moving cattle through the area, has occurred at this site about once every 5 years for the past 100 years (Clark et al. 2006, pp. 21, 25). Cattle trailing has impacted, and is expected to continue to impact, only a few individual plants (Clark et al. 2006, pp. 21, 25). The Conservation Strategy states that Capitol Reef will monitor for potential impacts as well as identify and implement management actions and guidelines that will help maintain long-term sustainability and conservation of the population (Forest Service et al. 2006, pp. 35–37). Additionally, grazing range improvements outside of the range of *E. maguirei* serve to draw cattle further away from *E. maguirei* populations (Clark et al. 2006, pp. 21, 25). Because we now know that *E. maguirei* primarily occurs in areas inaccessible to livestock, in combination with the increased population and distribution, grazing is no longer considered a threat, nor is it likely to become one within the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

Prior to the species' 1985 listing, no Federal or State laws protected *Erigeron maguirei* (50 FR 36090, September 5, 1985). Since then, substantial protections have been secured. The BLM Management Plan has provided protection to *E. maguirei* and its habitat in the San Rafael Swell areas (BLM 1991a; 61 FR 31056, June 19, 1996). The completion and implementation of the National Park Service Capitol Reef Management Plan has provided protection to the largest populations of *E. maguirei* and its habitat (61 FR 31056, June 19, 1996). Habitat for *E. maguirei* does not occur within 0.8 km (0.5 mi) of classified or potentially designated motorized routes on Fishlake National Forest lands (Forest Service 2006c, pp. 123, 260–263). In addition, the proposed Fishlake National Forest Management Plan would afford protections to the remaining portions of the Capitol Reef Meta-Population through the designation of the Billings Pass Botanical Area (Forest Service 2006a, pp. 2c–17, 2c–18, 2c–43; Tait 2006).

Over 98 percent of known *Erigeron maguirei* plants occur on lands managed by Capitol Reef (91 percent), BLM Price Field Office (6 percent), and Fishlake National Forest (1 percent) (Clark et al. 2006, p. 16) (Table 1). Less than 2 percent of the known population occurs on lands administered by SITLA where no protections for *E. maguirei* exist (Clark et al. 2006, p. 16) (Table 1).

On BLM lands, WSAs are managed according to the Interim Management Policy for Lands under Wilderness Review, BLM Handbook 8550–1, until Congress either designates them into the National Wilderness Preservation System or releases them from wilderness study for other purposes (BLM 1976, p. 1). In 1991, BLM recommended to Congress that: 100 percent of the Muddy Creek WSA be made permanent wilderness; 99 percent of the Sid's Mountain WSA be made permanent wilderness; and none of the Devils Canyon WSA be made permanent wilderness (BLM 1991b, pp. 795, 807, 817). The Devils Canyon WSA includes approximately 10 percent of the BLM portion of the Secret Mesa population

(Ivory 2007). Given BLM's support for the permanent protection of the majority of the WSAs where *Erigeron maguirei* occurs, we believe Congressional release from the National Wilderness Preservation System is unlikely.

Four of the six known populations of *Erigeron maguirei* that occur on lands administered by the BLM are within the Muddy Creek, Sid's Mountain, and Devils Canyon WSA (Kass 1990, p. 23; BLM 1991a, pp. 63–64; Clark et al. 2005, p. 19; Ivory 2006). One-hundred percent of the John's Hole and 50 percent of the Seger's Hole populations occur within the Muddy Creek WSA (Clark et al. 2006, p. 16; Ivory 2006). Ninety percent of the Coal Wash population occurs within the Sid's Mountain WSA (Clark et al. 2006, p. 16; Ivory 2006). Ninety percent of the portion of the Secret Mesa population on BLM lands occurs within the Sid's Mountain and Devils Canyon WSAs (Clark et al. 2006, p. 16; Ivory 2006). The Links Flats population is the only occurrence on BLM lands without any portion of the population protected as a WSA. Table 1 further illustrates the various protections in place on each of these populations.

Except for grandfathered uses, the lands under wilderness review must be managed so as not to impair their suitability for preservation as wilderness (BLM 1976, p. 2). Grazing, a non-threat as discussed above, is the only grandfathered use exempt from no surface occupancy stipulations. No surface disturbance stipulations apply to grandfathered mining and mineral extraction. While lands under wilderness review may not be closed to future appropriation under the mining laws, no surface occupancy stipulations apply in order to preserve their wilderness character (BLM 1976, p. 2). Temporary uses are permitted within WSAs as long as they create no new surface disturbance and do not involve permanent placement of structures (BLM 1976, p. 2).

The BLM San Rafael Resource Management Plan was approved on May 24, 1991 (BLM 1991a). *Erigeron maguirei* is provided protection through land use planning decisions, including the designation of ACECs (BLM 1991a). Five of the six known populations of *E. maguirei* that occur on lands administered by the BLM are within the San Rafael Canyon (middle portion), Sid's Mountain, Highway I–70 Scenic Corridor, Muddy Creek, and Seger's Hole ACECs (Clark et al. 2005, p. 16; Ivory 2006). Twenty-five percent of Calf Canyon population's range occurs on BLM land, of which 95 percent occurs within the San Rafael Canyon ACEC (middle portion) (Clark et al. 2006, p. 16; Ivory 2006). One-hundred percent of the Coal Wash population occurs within the Sid's Mountain ACEC (Clark et al. 2006, p. 16; Ivory 2006). One-hundred percent of the portion of the Secret Mesa population on BLM land occurs within the Sid's Mountain ACEC or Highway I–70 Scenic Corridor ACEC (Clark et al. 2006, p. 16; Ivory 2006). Ten percent of the John's Hole population's range occurs within the Muddy Creek ACEC (Clark et al. 2006, p. 16; Ivory 2006). Twenty percent of the Seger's Hole population's range occurs within the Seger's Hole ACEC (Clark et al. 2006, p. 16; Ivory 2006). The Links Flats population is the only occurrence on BLM lands without any portion of the population protected as an ACEC. Table 1 further illustrates the various protections in place for each population and highlights where ACECs and WSAs overlap.

Special management conditions that apply to all WSAs and ACECs include: Open to mineral entry with plans of operations; avoided for right-of-way grants; excluded from private and commercial use of woodland products, except for limited onsite collection of downed dead wood for campfires; designated as closed to off-road vehicle use when ACEC is within a WSA or WSA has been designated as primitive, otherwise use is limited to designated roads and trails; and they are subject to fire suppression with special conditions (BLM 1991a, pp. 14, 64–69, 81–89).

The Highway I–70 Scenic Corridor, Muddy Creek, Seger's Hole, and Sid's Mountain ACECs are open to mineral leasing, but no-surface-occupancy stipulations must be attached to the lease. These areas are also closed for disposal of mineral materials; open to range improvements with special conditions; excluded from land treatments; and are designated as Visual Resource Management Class I (described above) (BLM 1991a, pp. 14, 64, 81–82). An exception to the no-surface-occupancy stipulation may be granted in the Highway I–70 Scenic Corridor ACEC if an environmental assessment concludes that the proposed action would not adversely affect scenic values (BLM 1991a, pp. 14, 81–82).

The San Rafael Canyon ACEC (middle portion) is open to mineral leasing with surface restrictions; open for disposal of mineral materials with special conditions; excluded from range improvements and land treatments unless used to protect or improve riparian values; and is designated as Visual Resource Management Class II (BLM 1991a, pp. 14, 64, 81–82). The objective of this class is to retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape.

The Highway I–70 Scenic Corridor, Muddy Creek, San Rafael Canyon (Middle Portion), Seger's Hole, and Sid's Mountain ACECs are managed to protect scenic values (BLM 1991a, pp. 82–85). The Muddy Creek ACEC also contains the Tomsich Butte special emphasis area, which is managed to protect historic values (BLM 1991a, p. 82).

The BLM Price Field Office is proceeding with a revision of the 1991 Resource Management Plan (BLM 2004). Final decisions on special designations will be made in the Final Resource Management Plan by the summer of 2008 (BLM 2008a, p. 1). The WSA designations will remain until Congress acts to remove them from this status, or they are determined to be Wilderness Areas. The protective management resulting from ACEC designations could be revised by this process. Not all of the Draft Resource Management Plan alternatives contain ACEC designations. Our final determination on this proposed delisting rule will not be completed before the conclusion of this process and will consider the final decisions regarding these ACECs.

National Parks are administered under the provisions of ''An Act to establish a National Park Service and for other purposes approved August 25, 1916'' (39 Stat. 535), as amended and supplemented (commonly referred to as the ''Organic Act'' because it created the National Park System) (16 U.S.C. 1, 2–4). The Organic Act specifies that the NPS is to ''promote and regulate the use of the Federal areas known as national parks, monuments, and reservations * * * which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

Capitol Reef National Park, which contains approximately 91 percent of the *Erigeron maguirei* individuals, has land management policies in place that afford protection to the species. Capitol Reef's 1998 Final General Management Plan/Development Concept Plan defines Primitive and Threshold Management Zones within the Park (Capitol Reef 1998, pp. 27–31). All Capitol Reef *E. maguirei* sites are located within these

Management Zones (Clark 2006a). Travel through the Primitive Management Zones is limited to cross-country hiking or horseback riding on unimproved trails and routes and travel within the Threshold Management Zone is on paved or two-wheel drive, low clearance, all-weather roads (Capitol Reef 1998, pp. 28–31). Grazing is not allowed within either of these zones (Capitol Reef 1998, pp. 28–31). Within the Primitive Management Zone, developments are not permitted and physical modifications are not allowed except for natural or cultural resource protection (Capitol Reef 1998, p. 29). Limited development is provided in the Threshold Management Zone, but no new major structures or facilities are allowed (Capitol Reef 1998, p. 31). The remoteness of the species and its preference of the Navajo Sandstone formation, which is predominantly on top of mesas and other inaccessible areas, render the habitat for *E. maguirei* safe from development.

The 2006 NPS Management Policies Section 4.4.1.1, Plant and Animal Population Management Principles, states that the NPS will maintain all native plant and animal species and their habitats inside parks. In addition, these policies state that ''the (National Park) Service will work with other land managers to encourage the conservation of the populations and habitats of these species outside parks whenever possible'' (NPS 2006, p. 62).

The National Forest Management Act (1976) directs National Forests to manage habitat to maintain viable populations of existing native and desired nonnative vertebrate species in habitat distributed throughout their geographic range on National Forest System lands (Forest Service 1976). In 1983, U.S. Department of Agriculture Departmental Regulation 9500–4 provided further direction to the Forest Service, expanding the viability requirements to include plant species (U.S. Department of Agriculture 1983, p. 2). While the 2005 Forest Service planning regulations (70 FR 1023, January 5, 2005) would have eliminated species' viability requirements, these regulations were remanded by the court on March 30, 2007 (*Citizens for Better Forestry* v. *U.S. Department of Agriculture* (Northern District of California 2007)).

Because *Erigeron maguirei* was not known to occur on Forest Service lands in 1986, the current Forest Service land management plan does not identify *E. maguirei* as occurring within the National Forest (Forest Service 1986). Less than 1 percent of all known plants occur on National Forest Service lands. Of these, the current mapped range of *E. maguirei* on Forest Service lands is as follows: Approximately 33 percent is designated as a Semi-Primitive Non-Motorized area; approximately 65 percent is designation as an Intensive Livestock Management area; and the remaining 2 percent is designated a Wood Fiber Non-Sawtimber area.

In December 2006, the Fishlake National Forest finalized their Off-Highway Vehicle Route Designation Project providing further protections for this area (Forest Service 2006b). Under this plan, motorized routes on Fishlake National Forest lands can not occur within 0.8 km (0.5 mi) of the Deep Creek population (Forest Service 2006c, pp. 123, 260–263).

In June 2006, the Dixie and Fishlake National Forests released a draft revision to their land management plan (Forest Service 2006a). The proposed Billings Pass Botanical Area encompasses all the habitat administered by the Forest Service within the Capitol Reef Meta-Population (Forest Service 2006a, pp. 2c–17, 2c–18, 2c–43; Tait 2006). Additional suitable habitat exists outside of this Botanical Area, but it has not yet been surveyed (Tait 2006). The emphasis for this area is on maintaining the endemic plants that live in the area (Forest Service 2006a, pp. 2c–18). The Billings Pass Botanical Area is within the semi-primitive non-motorized use area where travel is restricted to hiking and horseback riding (Forest Service 2006a, pp. 1b–34, 1b–37). At the time of this proposed delisting rule, a schedule was not available for the completion of the final Dixie National Forest and Fishlake National Forest Land Management Plan.

The portion of the range owned by SITLA, which contains less than 2 percent of all known or estimated Maguire daisy plants, does not have any special management to benefit *Erigeron maguirei*. SITLA's mission mandates that revenue is the only factor considered in management and sale decisions. About 75 percent of the range of the Calf Canyon population (last surveyed in 1980) is on land owned by SITLA. About 10 percent of the Secret Mesa population occurs on SITLA lands. And about 20 percent of the Link Flats population occurs on SITLA lands. In total, SITLA manages about 2 percent of all known or estimated Maguire daisy plants (see Table 1).

Summary of Factor D: In conclusion, Federal land management agencies have worked collaboratively since listing to ensure long-term protection of *Erigeron maguirei* and its habitat. Land management plans, policies, and regulations that provide protection to *E. maguirei* are now in place and include: (1) Capitol Reef Primitive and Semi-Primitive Management Zones; (2) BLM WSAs and ACECs; and (3) Forest Service semi-primitive non-motorized designations. If the proposed Fishlake National Forest Botanical Area is finalized, this will provide additional protections for Forest Service's portion of the Capitol Reef Meta-Population. The threat due to inadequacy of existing regulatory mechanisms is no longer applicable.

Furthermore, the Interagency Rare Plant Team's collaborative efforts will continue to benefit *Erigeron maguirei*. Most recently, this team developed the Conservation Strategy (Forest Service et al. 2006, pp. 5–6). Through the Conservation Strategy the agencies have committed to survey and monitor *E. maguirei* (and other species) and implement management to ensure the population remains stable after delisting (Forest Service et al. 2006, p. 5). The Conservation Strategy outlines the procedural provisions that will guide Federal agencies' future management of the *E. maguirei* and other species (Forest Service et al. 2006, pp. 24–25). In addition, this Conservation Strategy commits the Federal agencies, to the extent practicable, to implement the conservation actions needed to reduce or eliminate potential threats and to promote the conservation and perpetuation of *E. maguirei* and other species (Forest Service et al. 2006, pp. 38–47). The Conservation Strategy can be viewed in its entirety at: *http://mountain-prairie.fws.gov/species/plants/maguiredaisy/*. Copies can also be obtained from the Utah field office (see **FOR FURTHER INFORMATION CONTACT** section).

E. Other Natural or Manmade Factors Affecting its Continued Existence

The 1985 final listing rule mentioned that the genetic viability of *Erigeron maguirei* was thought to be greatly reduced due to the small known population size, geographic separation, and reproductive isolation (50 FR 36090, September 5, 1985). The June 19, 1996, final rule reclassifying *E. maguirei* to threatened also listed inbreeding and loss of genetic variability as potential threats since the species continued to be known only from small, reproductively isolated populations (61 FR 31056, June 19, 1996).

As discussed previously, recovery efforts have substantially increased the known number and distribution of *Erigeron maguirei* individuals rangewide. These newly discovered sites provide connectivity between the known sites identified since we

published the final listing and downlisting rules and Recovery Plan, thus reducing inbreeding threats posed by geographic separation and reproductive isolation (50 FR 36089–36092, September 5, 1985; Service 1995, p. 5; 61 FR 31054–31058, June 19, 1996; Clark et al. 2006, p. 24). In addition, populations in the Capitol Reef area are separated by short distances and are connected to contiguous habitat (Clark et al. 2006, p. 24). A similar situation exists within the San Rafael Swell area where most suitable habitat occurrences are separated by short distances (Clark et al. 2006, p. 24). Additional survey work here would also likely find additional sites connecting populations and Meta-Populations. Due to the number of populations and individuals of *E. maguirei* found and the inter-connectivity of the habitat, the species is no longer considered to be threatened by a loss of genetic variability.

Pesticide use is known to occur within Capitol Reef's Fruita Rural Historic District; a cultural area on the National Register of Historic Places (Alston and Tepedino 2005, p. 10). This area must be managed effectively for fruit production (Alston and Tepedino 2005, p. 10). Management includes spraying apple and pear trees with the pesticide Phosmet in order to control the codling moth (*Cydia pomonella*) (Alston and Tepedino 2005, p. 10). Capitol Reef's Integrated Pest Management program states that the use of Phosmet may affect nearby populations of threatened and endangered species, including *Erigeron maguirei* (Alston and Tepedino 2005, pp. 10–11). Alston and Tepedino (2005, p. 11) studied an *E. maguirei* site near the orchard (1.8 km/1.1 mi) and one further away (5.7 km/3.5 mi), finding no significant difference in productivity. No other routine pesticide use is known to occur within the range of *E. maguirei*. Thus, the best scientific data available does not suggest the current use of the Phosmet insecticide is a threat to *E. maguirei* (Alston and Tepedino 2005, p. 61).

When the Recovery Plan was written, the demographic stability of the various populations was not known (Service 1995, p. 5). Van Buren and Harper (2002, p. 2) conducted demographic monitoring studies for three *Erigeron maguirei* populations from 1992 to 2001. Their studies have found *E. maguirei* to be relatively long lived with low mortality. The species has the ability to replace individuals at a rate that compensates for mortality (Van Buren and Harper 2002, p. 5).

Summary of Factor E: In conclusion, reduced genetic variability, inbreeding posed by geographic separation and reproductive isolation, and the use of Phosmet as an insecticide in the Capitol Reef's Fruita Rural Historic District do not threaten with extinction *Erigeron maguirei* in all or a significant portion of the range currently or within the foreseeable future.

Conclusion of 5-Factor Analysis

As required by the Act, we considered the five potential threat factors to assess whether *Erigeron maguirei* is threatened or endangered throughout all or a significant portion of its range. When considering the listing status of the species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then the species is listed or remains listed in its entirety. For instance, if the threats on a species are acting only on a portion of its range, but they are at such a large scale that they place the entire species in danger of extinction, we would list or continue to list the entire species.

We have carefully assessed the best scientific and commercial data available and determined there is no information to suggest the species is either in danger of extinction throughout all of its range or likely to become endangered in the foreseeable future throughout all its range. Recovery efforts have identified approximately 164,250 *Erigeron maguirei* individuals over an estimated range of 1,010 square km (390 square mi) (Clark et al. 2006, p. 17). This represents a substantial increase from the time of listing in 1985, when the species was known from 7 individuals on BLM land limited to the upper ends of branches of Pine Canyon (49 FR 30211, July 27, 1984); and from 1996 when the species was downlisted to threatened, when taxonomic revision had increased the total population of *E. maguirei* to approximately 3,000 plants within 5 populations from the San Rafael Swell in Emery County to Capitol Reef in Wayne County (59 FR 46220, September 7, 1994). Current populations appear stable, threats to the species have been addressed, and adequate regulatory mechanisms ensure the species is not currently and is not likely to again become threatened or endangered in all of its range.

Having determined that *Erigeron maguirei* does not meet the definition of threatened or endangered throughout all of its range, we must next consider whether there are any significant portions of its range that are in danger of extinction or are likely to become endangered in the foreseeable future. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (U.S. DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient in some cases for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; conversely, if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are

intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we next addressed whether any portions of the range of *Erigeron maguirei* warranted further consideration. We noted that, as discussed in Factor A, there are several small geographic areas where localized mineral extraction activities remain as a potential threat in the foreseeable future. However, we concluded that these did not warrant further consideration because we believe such activities are unlikely to materialize in a meaningful way and if they do materialize, would be limited to small areas on the periphery of populations and there was no substantial information suggesting that these peripheral areas were significant portions of the range. Therefore, there is no substantial information that *E. maguirei* in these areas were likely to become in danger of extinction in the foreseeable future.

In summary, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause *Erigeron maguirei* to become in danger of extinction within the foreseeable future throughout all or any significant portion of its range. On the basis of this evaluation, we propose to remove *E. maguirei* from the List of Endangered and Threatened Plants (50 CFR 17.12).

Continued activity by the Interagency Rare Plant Team as well as continued implementation of protective measures provided by land management designations and protections and the Conservation Strategy should ensure *Erigeron maguirei* and its habitat continue to be protected from loss of individuals and environmental degradation. The Post-Delisting Monitoring Plan, discussed below, will allow us and our partners to monitor the species to ensure the status does not deteriorate, and if a decline is detected, to take measures to halt the decline so relisting is not necessary.

Effects of the Proposed Rule

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. The prohibitions under section 9(a)(2) of the Act make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, remove and reduce *Erigeron maguirei* to possession from areas under Federal jurisdiction, or remove, cut, dig up, or damage or destroy *E. maguirei* on any other area in knowing violation of any State law or regulation such as a trespass law. Section 7 of the Act requires that Federal agencies consult with us to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the species' continued existence. If *E. maguirei* is removed from the List of Endangered and Threatened Plants, these prohibitions would no longer apply. Delisting *E. maguirei* is expected to have positive effects in terms of management flexibility to the States and Federal governments. Federal agencies will continue to implement management plans to conserve *E. maguirei* and its habitat.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to monitor for at least 5 years species that are delisted due to recovery. Post-delisting monitoring refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of post-delisting monitoring is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as threatened or endangered is not again needed. If at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

Section 4(g) explicitly requires cooperation with the States in development and implementation of post-delisting monitoring programs. In early 2007, we asked the State of Utah to be a cooperator in Post-Delisting monitoring. In a letter dated March 6, 2007, the State suggested their participation in post-delisting monitoring was unnecessary (Harja 2007).

We have prepared a draft Post-Delisting Monitoring Plan for *Erigeron maguirei* (Service 2007). The draft Plan (1) summarizes the species' status at the time of delisting; (2) defines thresholds or triggers for potential monitoring outcomes and conclusions; (3) lays out frequency and duration of monitoring; (4) articulates monitoring methods including sampling considerations; (5) outlines data compilation and reporting procedures and responsibilities; and (6) proposes a post-delisting monitoring implementation schedule including timing and responsible parties. The draft Post-Delisting Monitoring Plan was modeled after the Conservation Strategy and incorporated the Maguire Daisy Survey Protocol developed and tested by the Interagency Rare Plant Team (Clark 2006b).

Through this combined proposed delisting rule and notice, we announce the Plan's availability for public review. The draft Post-Delisting Monitoring Plan can be viewed in its entirety at: *http://mountain-prairie.fws.gov/species/plants/maguiredaisy/*. Copies can also be obtained from the Utah field office (see **FOR FURTHER INFORMATION CONTACT** section). We seek information, data, and comments from the public regarding *Erigeron maguirei* and the post-delisting monitoring strategy. We are also seeking peer review of this Plan concurrently with this comment period. We anticipate finalizing this Plan, considering all public and peer review comments, prior to making a final determination on the proposed delisting rule.

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least five appropriate and independent specialists regarding the science in this proposed rule and our Post-Delisting Monitoring Plan. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed delisting and the approach laid out in our Post-Delisting Monitoring Plan. We will consider all comments and information received during the comment period on this proposed rule and our Post-Delisting Monitoring Plan during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (6) What else could we do to make the proposed rule easier to understand?

Send a copy of any written comments about how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail the comments to this address *Exsec@ios.doi.gov*.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

Office of Management and Budget (OMB) regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act (44 U.S. C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that ''ten or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal government are not included. The Service 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.

This rule does not contain any collections of information that require approval by OMB under the Paperwork Reduction Act. As proposed under the Post-Delisting Monitoring section above, *Erigeron maguirei* populations will be monitored by Capitol Reef, Fishlake National Forest, and the BLM Price Field Office in accordance with the Conservation Strategy. We do not anticipate a need to request data or other information from 10 or more persons during any 12-month period to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more non-Federal individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

References Cited

A complete list of all references cited in this document is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service, West Valley City, Utah (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are staff located at the Ecological Services Utah Field Office, U.S. Fish and Wildlife Service, West Valley City, Utah (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. Amend § 17.12(h) by removing the entry ''*Erigeron maguirei*'' under ''FLOWERING PLANTS'' from the List of Endangered and Threatened Plants.

Dated: April 16, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–9282 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 73, No. 96

Friday, May 16, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: US. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995. Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0576 Form Number: N/A.

Title: Security firm Survey.

Type of Submission: Renewal of Information Collection.

Purpose: It has become increasingly necessary in today's international environment for USAID to employ security firms to assist in providing a secure environment for its overseas employees. Due to the recent event involving the use of deadly force by U.S. Government contractors and/or subcontractors or subgrantees in Iraq, there is now a tremendous amount of interest in how, when and where the Government uses these private security firms. This necessity and resulting heightened scrutiny will continue for the foreseeable future.

USAID's Office of Acquisition and Assistance (''OAA'') must therefore closely monitor the types of security service contracts and agreements USAID missions enter into and how these contracts/grants are implemented. Approximately 20 missions have entered into security service contracts/agreements and most of the information OAA requests can be gathered within the mission without burdening the contractors/grantees. Missions will be instructed to contact the contractors/grantees on a limited basis only when the information cannot be obtained internally.

Annual Reporting Burden:

Respondents: 20.

Total annual responses: 20.

Total annual hours requested: 60 hours.

Dated: May 8, 2008.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. E8–10981 Filed 5–15–08; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No.: ANS–FV–07–0100; FV–08–328]

United States Standards for Grades of Frozen Okra

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the comment period for the proposed notice to revise the United States Standards for Grades of Frozen Okra is being reopened and extended.

DATES: Comments must be submitted on or before July 15, 2008.

ADDRESSES: Written comments may be submitted to: Albert K. Hoover, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; fax (202) 690–1527; *http://www.regulations.gov*; or e-mail *albert.hoover@usda.gov*. Comments should, reference the date and page of this issue of the **Federal Register**. All comments received will be made available for public inspection, at the address listed above, during regular business hours and on the Internet at *http://www.regulations.gov*.

The draft of the United States Standards for Grades of Frozen Okra is available through the address cited above, or *http://www.regulations.gov*. Any comments received regarding this proposed standard will also be posted on these sites.

FOR FURTHER INFORMATION CONTACT: Albert K. Hoover at: (202) 720–5021 or by e-mail at: *albert.hoover@usda.gov*.

SUPPLEMENTARY INFORMATION: A notice was published on December 12, 2007 in the **Federal Register** (72 FR 238) requesting comments on a proposal to revise the United States Standards for Grades of Frozen Okra. The action would create a change in the grade standards for frozen okra that will include a change from a ''score point'' grading system to an ''individual attribute'' grading system. The individual attribute grading system uses sample sizes and acceptable quality levels (AQL's), along with tolerances and acceptance numbers (number of allowable defects), to determine the quality level of a lot. The action will also modify the definition of several terms, in order to bring frozen okra in line with current marketing practices. The proposed standard will provide a common language for trade, a means of measuring value in the marketing of frozen okra1 and provide guidance in the effective utilization of frozen okra.

The American Frozen Food Institute (AFFI) requested that additional time be provided for interested persons to comment on the proposed standard. AFFI believes that reopening the comment period will enable interested parties adequate time to review the proposed changes.

After reviewing the request, the Department is reopening the comment period in order to allow sufficient time for all interested persons to file comments.

This notice provides for a 60 day period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621–1627.

Dated: May 9, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–10845 Filed 5–15–08; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–08–5101–ER–K099; WYW–174598; IDI–35849]

Notice of Intent To Prepare an Environmental Impact Statement, for the Gateway West 230/500 kV Transmission Line Project in Idaho and Wyoming and Possible Land Use Plan Amendments

AGENCIES: Bureau of Land Management, DOI; and Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS), Possible Land Use Plan Amendments, and notice of public scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and in response to a Right-of-Way (ROW) application filed by Idaho Power and Rocky Mountain Power, the Bureau of Land Management (BLM), Wyoming State Office, U.S. Forest Service (USFS), Caribou-Targhee and Medicine Bow-Routt National Forests, announces their intention to prepare an EIS and conduct public scoping meetings. Idaho Power and Rocky Mountain Power propose to construct electric transmission lines from the proposed Windstar Substation near the Dave Johnston Power Plant at Glenrock, Wyoming to the proposed Hemingway substation near Melba, Idaho, approximately 20 miles southwest of Boise, Idaho. The project is composed of 11 transmission line segments with a total length of approximately 1,250 miles. Authorization of this proposal may result in the amendment of Forest Service and BLM land use plans (Forest Plans, Management Framework Plans, and Resource Management Plans).

DATES: This notice initiates the public scoping process. The BLM can best use public input if comments and resource information are submitted by July 03, 2008. To provide the public an opportunity to review the proposal and project information, the BLM expects to hold at least nine meetings in both Idaho and Wyoming along the proposed route. The meetings will be conducted in an ''open house'' format with the BLM staff and project proponents available to explain project details and gather information from interested individuals or groups. BLM is proposing to host open houses in the following communities: Casper, Kemmerer, Rawlins, and Rock Springs, Wyoming; Boise, Montpelier, Murphy, Pocatello, and Twin Falls, Idaho. The BLM will announce the exact dates, times, and locations for these meetings at least 15 days prior to the event. Announcements will be made by news release to the media, individual letter mailings, and posting on the project Web site listed below.

ADDRESSES: You may submit comments or resource information by any of the following methods:

- *Web site: http://www.wy.blm.gov/nepa/cfodocs/gateway_west.*
- *E-mail: Gateway_West_WYMail@blm.gov.*
- *Mail:* Bureau of Land Management, Gateway West Project, P.O. Box 20879, Cheyenne, WY 82003.
- *Courier or Hand Deliver:* Bureau of Land Management, Gateway West Project, 5353 Yellowstone Road, Cheyenne, WY 82009.

Documents pertinent to the ROW application may be examined at:

- Bureau of Land Management, Wyoming State Office, Public Room, 5353 Yellowstone Road, Cheyenne, WY 82003, Telephone (307) 775–6256.
- Bureau of Land Management, Idaho State Office, Public Room, 1387 South Vinnell Way, Boise, Idaho 83709, Telephone (208) 373–3863.

FOR FURTHER INFORMATION: For further information and/or to have your name added to our mailing list, contact Walter George, Gateway West Project Manager, Wyoming State Office, P.O. Box 20879, Cheyenne, WY 82003 or by e-mail to *Gateway_West_WYMail@blm.gov.*

SUPPLEMENTARY INFORMATION: Idaho Power and Rocky Mountain Power have submitted a ROW application to locate 230 and 500 kV electric transmission lines on federal lands. The proposed lines originate at the proposed Windstar Substation near the Dave Johnston Power Plant at Glenrock, Wyoming and end at the proposed Hemingway Substation, approximately 20 miles southwest of Boise, Idaho. The project is composed of 11 segments with a total length of approximately 1,250 miles. The requested ROW width varies from 150 to 250 feet. Approximately 500 miles or 40% of the total length traverses federally-administered land in Idaho and Wyoming.

In Idaho, approximately 300 miles crosses public land administered by seven BLM Field Offices: Bruneau, Burley, Four Rivers, Jarbidge, Owyhee, Pocatello, and Shoshone. In Wyoming, approximately 200 miles crosses public land administered by four BLM Field Offices: Casper, Kemmerer, Rawlins and Rock Springs. An alternate route may be considered that involves approximately one mile of public lands in the Salt Lake Field Office of Utah. In addition, the proposed transmission line route crosses approximately 12 miles in two units of the National Forest System administered by the Forest Service, Department of Agriculture: Two miles in the Douglas Ranger District of the Medicine Bow National Forest in Wyoming and ten miles in the Montpelier Ranger District of the Caribou-Targhee National Forest in Idaho.

The proposed route generally follows existing power lines in the Idaho Power and Rocky Mountain Power systems. The proposed route passes near the following towns and locations:

- In Wyoming: Casper, Hanna, Rawlins, Rock Springs, and Kemmerer.
- In Idaho: Montpelier, American Falls, Twin Falls, Glenns Ferry, Mountain Home, Burley, Shoshone, Jerome, and Boise.

BLM is the lead federal agency for the NEPA analysis process and preparation of the EIS. Cooperating agencies identified at this time include: The USFS, National Park Service, Fish and Wildlife Service, State of Wyoming, Cassia County, Idaho, Lincoln and Sweetwater Counties, Wyoming. Other states and local governments will be invited to participate as cooperating agencies.

Through public scoping, the BLM expects to identify various issues, potential impacts, mitigation measures, and alternatives to the proposed action. At present, the BLM has identified the following issues and concerns:

- Effects on wildlife habitat, plants, and animals including threatened, endangered, and sensitive species.
- Effects to visual resources and existing view sheds.
- Effects to National Historic Trails and their view sheds.
- Effects to Native American traditional cultural properties and respected places.
- Effects to soils and water from surface disturbing activities.
- Land use conflicts and inconsistency with land use plans.
- Effect of the project on local and regional socioeconomic conditions.
- Increased potential for introduction and spread of noxious weeds and the ability to efficiently reclaim lands disturbed by transmission line construction or location.

The BLM will analyze the proposed action and no action alternatives, as well as other possible alternatives to the proposed power line location and access routes. The BLM encourages you to send us your comments concerning the

power line project as proposed and feasible alternative locations, possible mitigation measures, and any other information relevant to the proposed action.

Authorization of this proposal may require amendment of one or more Forest Service or BLM land use plans. By this notice, BLM is complying with requirements in 43 CFR 1610.2(c) and the USFS is complying with 36 CFR 219.9 to notify the public of potential amendments to land use plans. If a Resource Management Plan, Management Framework Plan, or Forest Plan Amendment is necessary, BLM and USFS will integrate the land use planning process with the NEPA analysis process for this project. The environmental decision document for the BLM will be signed by the Wyoming State Director, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Approving officials for the USFS are: Regional Forester, Region 2, 740 Simms Street, Golden, Colorado 80401–4720 and Regional Forester, Region 4, 324 25th Street, Ogden, Utah 84401.

Your input is important and will be considered in the environmental analysis process. All comment submittals must include the commenter's name and street address. Comments including the names and addresses of the respondent will be available for public inspection at the above offices during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except federal holidays. Before including your address, phone number, e-mail address, or any other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information may be publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Any persons wishing to be added to a mailing list of interested parties can call or write to BLM, as described in this notice. Additional informational meetings may be conducted throughout the process to keep the public informed of the progress of the EIS.

Dated: May 5, 2008.

Robert G. Mickelsen,

Acting Forest Supervisor.

Dated: May 12, 2008.

James K. Murkin,

Acting State Director.

[FR Doc. E8–11060 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statement for Implementing the Travel Management Rule for the Deschutes and Ochoco National Forests and Crooked River National Grassland, Deschutes & Ochoco National Forests, Deschutes, Crook, Jefferson, Klamath, Grant and Lake Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Forest Service will prepare an environmental impact statement (EIS) on a proposed action to implement 36 CFR parts 212, 251, 261, and 295; Travel Management: Designated Routes and Areas for Motor Vehicle Use; Final Rule (Travel Management Rule). The Deschutes and Ochoco National Forests and the Crooked River National Grassland propose to prohibit motorized travel [1] outside of 300′ of the centerline of those existing designated routes (roads and trails) and areas that currently allow motorized use and that are not otherwise restricted or prohibited for such use by law, regulation, policy, order, Land and Resource Management Plans (Forest Plans), or other past administrative decisions. Class of vehicles (highway licensed and/or non-highway licensed) and season(s) of use that motorized access to dispersed campsites would be allowed would match the adjacent designated route classification and seasonal use period. Special provisions for motorized access only to designated, defined, or existing campsites, and/or prohibitions from motorized access would be applied adjacent to routes and within areas specified on the Proposed Action maps. Identification of routes with special provisions and/or prohibitions and would be based on a set of criteria for establishing exceptions to the general provision for 300′ motorized access adjacent to designated routes in the proposed action. No new motorized access to areas currently prohibited to motorized access would be included in the proposed action.

The proposed action would amend the Ochoco National Forest Plan by deleting forest plan standards and guidelines that are not consistent with the Travel Management Rule and the proposed action. The proposed action would amend the Deschutes National Forest Plan to make minor (1–2 day) corrections to some motorized season of use dates for consistency with other similar season of use dates, and change some analysis requirements from outdated ''implementation units'' to watershed or similar sized ecologically-based areas. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated through the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

Location: The proposed action includes all of the Deschutes and Ochoco National Forests and Crooked River National Grassland. These federal lands are located in the vicinity of the central Oregon cities of Bend, Prineville, and Madras. The proposed action applies only to National Forest and Grassland lands, although lands of other than federal ownership lie adjacent or interspersed across the landscape with national forests and grasslands.

DATES: Comments concerning the scope of the analysis, issues about the proposed action, or alternatives to the proposed action are most helpful if received within 30 days following the date that this notice appears in the **Federal Register**.

ADDRESSES: Send written comments to the Deschutes National Forest at 1001 SW Emkay, Bend, OR 97701 Attention: Mose Harris, Travel Management Team.

FOR FURTHER INFORMATION CONTACT: Mose Harris, Writer-Editor, Mollie Chaudet, Peggy Fisher, or Laurel Skelton, at the Deschutes National Forest Headquarters, 1001 SW Emkay, Bend, OR 97702, (541) 383–5300.

Responsible Officials: The Responsible Officials are John Allen, Forest Supervisor, Deschutes National Forest and Jeff Walter, Forest Supervisor, Ochoco National Forest.

SUPPLEMENTARY INFORMATION:

Purpose and Need: In 2005, the Forest Service published a final rule in the **Federal Register**: 36 CFR Parts 212, 251, 261, and 295; Travel Management: Designated Routes and Areas for Motor Vehicle Use; Final Rule (Travel Management Rule). Currently, the Deschutes and Ochoco National Forests have over 9000 miles of designated routes (roads and trails), and a few designated areas that are open to a variety of highway and non-highway licensed vehicles. There is a variety of laws, regulations, and policies that result in a mixture of areas of the Forests and Grassland that do or do not allow motorized access off of these designated routes. The 2005 Travel

[1] Over the snow vehicles are excluded from this proposed action.

Management rule requires that all national forests prohibit motorized travel off of designated routes or outside of designated areas, with some exceptions. The rule was passed because of a number of resource and social concerns related to motorized travel that were detailed in the rule. Prohibiting motorized travel off of existing designated routes without exception would affect the ability of many forest users to access existing ''dispersed'' or informal campsites, some of which have been used by generations of families. The objective of the proposed action would be to continue to provide for motorized access to dispersed campsites without adversely affecting sensitive resources. There are also some potential safety concerns concerning ''mixed'' (highway and non-highway licensed vehicles) that could result from limiting all motorized use to the existing designated National Forest System roads and motorized trails on the Forests and Grassland. Currently, many National Forest System roads on the Deschutes and Ochoco National Forests and the Crooked River National Grassland have existing designations that follow state regulation(s) that allow for ''mixed'' use of highway and non-highway licensed vehicles on roads classified by the Forest Service as ''Maintenance Level 2''. Mixed use of some of these roads may pose a risk to reasonable levels of public safety for motorized users. The proposed action would implement the national Travel Management rule while continuing to provide motorized access for dispersed camping without adversely affecting sensitive resources and reasonable levels of public safety on mixed use roads.

Proposed Action: In accordance with 36 CFR 212, 251, 261, and 295, the Deschutes and Ochoco National Forests and the Crooked River National Grassland propose to prohibit motorized travel [2] outside of those existing designated routes (roads and trails) and areas where it is not already restricted or prohibited by law, regulation, policy, order, Forest Plan direction, or site-specific decision. The Proposed Action would not propose to close any existing designated motorized routes open to motorized travel, although non-highway licensed vehicles would be prohibited from some roads because of safety concerns. The proposed action would amend the Ochoco National Forest Plan by deleting forest plan standards and guidelines that are not consistent with the Travel Management Rule and the proposed action. The proposed action would amend the Deschutes National Forest Plan to make minor (1–2 day) corrections to some motorized season of use dates for consistency with other similar season of use dates, and change some analysis requirements from outdated ''implementation units'' to watershed or similar sized ecologically-based areas. Existing designated routes and areas for motorized use according to the season of use (open to use time frame) and class of vehicle (highway licensed or non-highway licensed) will be identified on the Deschutes and Ochoco National Forest and Crooked River National Grassland Proposed Action maps. In accordance with provisions of the Travel Management Rule, and with the objective of minimizing resource damage associated with motorized travel off of designated route, the proposed action would:

1. Continue to allow motorized access for the purpose of ingress and egress to a dispersed campsite within 300′ of the centerline of most of the designated routes shown on the proposed action maps. This approach mirrors the local so-called ''green dot'' motorized access rules that have been in place adjacent to some designated roads on the forests for many years during hunting seasons.

2. In certain areas with specific resource concerns, special provisions would continue to allow motorized access within 300′ of the centerline of a designated route only for the purpose of accessing designated, defined or existing dispersed campsites. Designated sites are marked with a sign; defined sites limit the extent of the site and motorized access to the site with boulder or wood structures; and existing sites have established fire rings or other evidence of historic use.

3. In riparian areas (those areas adjacent to wetlands, lakes, streams and springs), motorized access would continue to be allowed only to designated, defined, or existing camping sites. Motorized access to existing (not specifically designated or defined) campsites less than 30′ from the edge of the wetland, lake, stream or spring would not be allowed. Motorized vehicles would not be permitted to cross streams except on designated roads or trails open to motorized use.

4. No motorized access to areas with current prohibitions or restrictions on motorized access to dispersed campsites (e.g.: Wilderness Areas, Newberry National Volcanic Monument Caldera Zone, other Management Areas adjacent to open roads but closed to motorized use) or motorized access to dispersed campsites not on National Forest lands would be authorized under this proposal.

Decisions To Be Made: The Deschutes and Ochoco Forest Supervisors are the Deciding Officials for:

Prohibiting motorized travel off of existing designated routes within the Deschutes and Ochoco National Forests and Crooked River National Grassland where such use is not already prohibited by law, regulation, policy, Land and Resource Management Plans, or past administrative action or decision;

determining whether or under what conditions motorized access for dispersed camping allowed by the rule would be provided;

determining whether or under what conditions mixed use of highway and non-highway licensed vehicles on identified national forest system roads would be allowed; and

determining whether, or under what conditions, to amend forest plans.

Possible Alternatives: The EIS will consider the following alternatives to the Proposed Action:

(1) A ''No Action/No Change'' Alternative—that would not prohibit motorized travel off of designated routes and would not amend forest plans. This action would not be consistent with the Travel Management Rule.

(2) The proposed action.

(3) Alternatives to the proposed action that are within the scope of the proposed action, meet the purpose and need, are responsive to the comments received during the scoping period, and are approved by the Forest Supervisors for consideration.

Scoping Process: The Deschutes and Ochoco National Forests have held ten public workshops and thirteen Travel Management Strategy Working Group meetings that were open to the public throughout central Oregon in 2006 and 2007 to help develop the proposed action identified for this Environmental Impact Statement. Additional public meetings to gather comments on the proposed action will be held at the following locations and dates from 5 p.m. until 8 p.m.:

- May 19—Sisters High School, 1700 W. McKinney Butte Rd., Sisters, Oregon.
- May 20—Madras Senior Center, 860 SW Madison, Madras, Oregon.
- May 21—Deschutes National Forest Headquarters, 1001 SW Emkay, Bend, Oregon.
- May 27—Ochoco National Forest Headquarters, 3160 NE 3 St., Prineville, Oregon.
- May 28—Gilchrist High School, 201 Mountain View Dr., Gilchrist, Oregon.
- June 2—Redmond High School, Hugh Hartman Building, 2105 W. Antler Ave., Redmond, Oregon.

[2] *Over the snow vehicles are excluded from this proposed action.*

Comment. Public comments about this proposal are requested in order help identify significant issues concerning the proposed action which will help to develop the range of alternatives to the proposed action that are considered and help to focus the analysis. Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied; the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Dated: May 9, 2008.

John Allen,

Forest Supervisor, Deschutes National Forest.

[FR Doc. E8–10947 Filed 5–15–08; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: June 15, 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:

Addition:

On March 21, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR15130) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the product listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

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

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

2. The action will result in authorizing small entities to furnish the product to the Government.

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

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

USCG Service/Name Tapes

NSN: 8455–00–NIB–0016—Name Tapes.
NSN: 8455–00–NIB–0017—Service Tapes.
NPA: Lions Industries for the Blind, Inc., Kinston, NC.
Coverage: C-List for the requirements of the U.S. Coast Guard.
Contracting Activity: U.S. Coast Guard, Uniform Distribution Center, Woodbine, NJ.

Deletions

On March 21, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR15130) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer 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 should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

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

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Custodial Services, Social Security Administration, 2401 Lind Street, Quincy, IL.
NPA: Transitions of Western Illinois, Inc., Quincy, IL.
Contracting Activity: General Services Administration, Public Buildings Service, Region 5, Chicago, IL.
Service Type/Location: Janitorial/Custodial Services, U.S. Federal Building and Post Office, Wenatchee, WA.
NPA: Northwest Center, Seattle, WA.
Contracting Activity: General Services Administration, Public Buildings Service, Region 10.

Dennis Lockard,

General Counsel.

[FR Doc. E8–11014 Filed 5–15–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: June 15, 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.

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

Regulatory Flexibility Act Certification

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

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

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

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

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

End of Certification

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services, Louis Munoz Marin International Airport, TSA Occupied Spaces, Carolina, PR.

Service Type/Location: Custodial Services, Social Security Administration Building, Plaza Sierra Cayey, Building PR3871ZZ, Cayey, PR.

NPA: The Corporate Source, Inc., New York, NY.

Contracting Activity: General Services Administration, Caribbean Property Management Center, Hato Rey, PR.

Dennis Lockard,

General Counsel.

[FR Doc. E8–11013 Filed 5–15–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 32–2008]

Foreign-Trade Zone 102—St. Louis County, MO; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the St. Louis County Port Authority, grantee of FTZ 102, requesting authority to expand the zone in St. Louis County, Missouri. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 9, 2008.

FTZ 102 was approved on April 27, 1984 (Board Order 251, 49 FR 19540, 5/8/84), and expanded on March 3, 1987 (Board Order 344, 52 FR 7915, 3/13/87). The general-purpose zone consists of one site (484,920 sq. ft.) located at 3901 Union Boulevard in St. Louis.

The applicant is now requesting authority to expand the zone to include two additional sites around the Lambert-St. Louis International Airport in St. Louis County: *Proposed Site 2* (492 acres)—NorthPark industrial park located at the northeast corner of Interstates 70 and 170 in the municipalities of Berkeley, Ferguson and Kinloch; and, *Proposed Site 3* (272 acres, 3 parcels)—Hazelwood Commerce Center (170 acres), located on Commerce Center Drive, Hazelwood; Lindbergh Distribution Center (26 acres), 5801 N. Lindbergh Boulevard, Hazelwood; and, Airport Property No. 1 (76 acres), 5260 Banshee Road, St. Louis. The sites will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 15, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 30, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce, Export Assistance Center, 8235 Forsyth Boulevard, Suite 520, St. Louis, MO 63105; and, Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Camille Evans at *Camille_Evans@ita.doc.gov* or (202) 482–2350.

Dated: May 9, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–11053 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 31–2008]

Foreign-Trade Zone 176—Rockford, IL; Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Rockford Airport Authority, grantee of FTZ 176, requesting authority to reorganize and expand the zone in the Rockford, Illinois, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 9, 2008.

FTZ 176 was approved on March 1, 1991 (Board Order 511, 56 FR 10409, 3/12/91), and expanded on February 9, 2005 (Board Order 1368, 70 FR 9613, 2/28/05), and on August 3, 2006 (Board Order 1473, 71 FR 47483, 8/17/06).

The zone project currently consists of the following sites (3,110 acres) in the Rockford area: *Site 1* (1,972 acres)—industrial park area of the Chicago Rockford International Airport, 60 Airport Drive, Rockford; *Site 1a* (2 acres)—warehouse facilities at 1635 New Milford School Road and 1129 18th Avenue, Rockford (expires 6/1/09); *Site 2* (6 acres)—warehouse at 500 South Independence Avenue, Rockford; *Site 3* (566 acres, 2 parcels)—CenterPoint Industrial Park (366 acres) located at the intersection of Route 38 and Brush Grove Road; and, Interstate Transportation Center Industrial Park (200 acres) located on the west side of State Highway 38, Rockford; *Site 4* (304 acres, 3 parcels)—LogistiCenter located at the southwest corner of Interstate 39 and Interstate 88, Rochelle; *Site 5* (53 acres)—South Rochelle Industrial Park located on State Highway 251 and Veterans Parkway, Rochelle; *Site 6* (74 acres)—Rolling Hills Industrial Park, 2200 Lakeshore Drive, Woodstock; and, *Site 7* (133 acres)—Crossroads Commerce Center, located at Interstate 88 and Main Street, Rochelle.

The applicant is now requesting authority for a reorganization and expansion of the zone, which includes both additions and deletions with an overall increase of 508 acres in total zone space as described below:

—Modify existing Site 1 by removing 1105 acres due to changed circumstances, expand to include an additional 441 acres, and to move Temporary Site 1a within Site 1 on a permanent basis (new total acreage—1308 acres);
—Remove Site 2 (6 acres) from the zone project due to changed circumstances;
—Remove Site 5 (53 acres) from the zone project due to changed circumstances;
—Add Proposed Site 8 (8 acres, 2 parcels)—Abilities Center located at 1907 Kishwaukee Street and Counselor Scale Building located at 2000 and 2100 South Kishwaukee Street, Rockford;
—Add Proposed Site 9 (16 acres, 2 parcels)—former Essex Wire Plant, 2816 North Main Street, Rockford;
—Add Proposed Site 10 (867 acres, 2 parcels)—Park 88 Industrial Park, located at the northwest corner of Peace Road and Fairview Drive and at the southwest corner of Peace Road and Gurler Road, De Kalb;
—Add Proposed Site 11 (46 acres, 2 parcels)—Loves Park Corporate Center, located at Bell School Road and Riverside Drive, Loves Park; and,
—Add Proposed Site 12 (296 acres, 2 parcels)—Rock 39 Industrial Park, located north and south of Baxter Road, east of Route 39 and west of Mulford Road, Cherry Valley.

No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 15, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 30, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Department of Commerce, Export Assistance Center, 605 Fulton Avenue, Suite E103, Rockford, IL 61103; and, Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Camille Evans at *Camille_Evans@ita.doc.gov* or (202) 482–2350.

Dated: May 9, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–11051 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 30–2008]

Foreign-Trade Zone 30—Salt Lake City, UT; Application for Reorganization and Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Salt Lake City Corporation, grantee of Foreign-Trade Zone 30, requesting authority to expand and reorganize its zone in Salt Lake City, Utah, within the Salt Lake City Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 8, 2008.

FTZ 30 was approved by the Board on May 26, 1977 (B. O. 119) and currently consists of 33 acres within the 740-acre Salt Lake International Business Park, adjacent to the Salt Lake City International Airport.

The applicant is now requesting authority to reorganize and expand the general-purpose zone by deleting the current site and adding 55 acres located at 1105 South 4800 West, Salt Lake City, Utah. The new site is owned by Rockefeller Group Development Corporation and will be designated as Site 2.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Claudia Hausler of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 15, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 30, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Export Assistance Center, 9690 S. 300 W., Suite 201D, Sandy, Utah 84070;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information contact Claudia Hausler at *Claudia_Hausler@ita.doc.gov* or (202)482–1379.

Dated: May 8, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–11048 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 33–2008]

Foreign-Trade Zone 167—Brown County, WI; Application for Subzone Status; Marinette Marine Corporation (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the

Board) by Brown County, Wisconsin, grantee of FTZ 167, requesting special-purpose subzone status for the shipbuilding facility of Marinette Marine Corporation (MMC), located in Marinette, Wisconsin. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 12, 2008.

The MMC facility (982 employees/53 acres/365,000 sq.ft.) is located at 1600 Ely Street in Marinette (Marinette County), Wisconsin. The facility is used to construct and repair patrol boats, tug boats, supply vessels, research vessels, anchor handlers, barges, and naval warships for U.S. and international customers. Foreign components that would be used at the MMC shipyard (representing about 20% of finished vessel value) include: marine engines and related parts, reduction gears, propellers, anti-fouling system control panels and anodes, mounting sleeves, fin stabilizers, dynamic positioning systems, winches, pumps, filtering equipment, valves, electronic components, wiring harnesses, generator sets, anchors, bulb flats, doors, windows, sanitary units, manholes, flow meters, chain, and fenders (duty rate range: free–5.0%).

FTZ procedures would exempt MMC from customs duty payments on foreign components used in export activity. On domestic sales, MMC could be able to elect the duty rate applicable to oceangoing vessels (free) for the foreign-origin components noted above. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The manufacturing and repair activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (e.g., angles, pipe, plate) which requires that full duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 15, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 30, 2008.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: Office of the Port Director, U.S. Customs and Border Protection, 2077 Airport Drive, Green Bay, Wisconsin 54313; and, Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002. For further information, contact Pierre Duy at *pierre_duy@ita.doc.gov*, or (202) 482–1378.

Dated: May 12, 2008.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. E8–11055 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–533–844)

Certain Lined Paper Products from India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: May 16, 2008.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 4th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8362.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 2007, the U.S. Department of Commerce (''the Department'') published a notice of initiation of the administrative review of the countervailing duty order on certain lined paper products from India covering the period of review February 13, 2006, through December 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 72 FR 61621 (October 31, 2007). The preliminary results are currently due no later than June 1, 2008.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245–day period to issue its preliminary results by up to 120 days.

Due to the complexity of the issues in this administrative review, such as the nature of the programs subject to review, the Department requires additional time to transmit supplemental questionnaires and evaluate responses received. Accordingly, we have determined that it is not practicable to complete the preliminary results of this review within the 245–day period. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of the review by 120 days. The preliminary results are now due no later than September 29, 2008. The final results continue to be due 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–11040 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–891

Hand Trucks and Certain Parts Thereof from the People's Republic of China: Extension of Time Limits for the Final Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 16, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474.

Background

The Department of Commerce (''Department'') published an antidumping duty order on hand trucks and certain parts thereof (''hand trucks'') from the People's Republic of China (''PRC'') on December 2, 2004.

See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China, 69 FR 70122 (December 2, 2004). On February 2, 2007, the Department published in the **Federal Register** a notice of the initiation of the antidumping duty administrative review of hand trucks from the PRC for the period December 1, 2005, through November 30, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On January 14, 2008, the Department published in the **Federal Register** the preliminary results of the hand trucks administrative review. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results, Partial Intent to Rescind and Partial Rescission of the 2005–06 Administrative Review*, 73 FR 2214 (January 14, 2008). The final results of review are currently due no later than May 13, 2008.

Extension of Time Limit of Final Results.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days. Completion of the final results of the administrative review within the 120–day period in this case is not practicable because the Department conducted verification in the administrative review after publication of the preliminary results, and, therefore, needs additional time to complete post–preliminary results verification reports, invite and analyze comments by interested parties on the preliminary results and verification reports, and analyze information gathered at verification.

Because it is not practicable to complete this review within the time specified under the Act, we are fully extending the time period for issuing the final results of the administrative review in accordance with section 751(a)(3)(A) of the Act. Therefore, the final results are now due no later than July 14, 2008, the next business day after 180 days from publication of the preliminary results. This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: May 9, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–11056 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 080505629–8631–01]

Interpretation of the International System of Units (the Metric System of Measurement) for the United States

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The International System of Units (SI) (the metric system of measurement) has been recognized for use in the United States since 1866 (15 U.S.C. 204) and is the preferred system of measurement for trade and commerce. The SI was established and is maintained by the General Conference of Weights and Measures and is interpreted or modified for use in the United States by the National Institute of Standards and Technology (NIST) by authority of the Secretary of Commerce (15 U.S.C. 205). This notice describes the recent modifications to the SI and announces the publication of the latest interpretation of the SI for the United States in the 2008 Edition of NIST Special Publication 330 ''The International System of Units.'' The 2008 Edition of NIST Special Publication 811 ''Guide for the Use of the International System of Units'' was also published. Together these publications provide the legal interpretation of and guidelines for the use of the SI in the United States.

FOR FURTHER INFORMATION CONTACT: Dr. Ambler Thompson, National Institute of Standards and Technology, Weights and Measures Division, International Legal Metrology Group, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600 or by telephone (301) 975–2333, Fax: (301) 975–8091, or by e-mail at *ambler.thompson@nist.gov*.

For information regarding NIST's efforts to coordinate the transition to the International System of Units, contact: Elizabeth Gentry, Metric Coordinator, National Institute of Standards and Technology, Weights and Measures Division, Laws and Metric Group, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600 or by telephone (301) 975–3690, Fax (301) 975–8091, or by e-mail at *TheSI@nist.gov.*

SUPPLEMENTARY INFORMATION: The International System of Units (abbreviated as SI in all languages), generally known as the metric system, is the preferred system of measurement for use in trade and commerce in the United States (15 U.S.C. 205b) but use of traditional systems of weights and measures in non-business activities is permitted. The SI was established in 1960 by the General Conference of Weights and Measures (abbreviated CGPM in all languages) and is interpreted, or modified for, the United States by the Secretary of Commerce (15 U.S.C. 205c) who has delegated this authority to the Director of the National Institute of Standards and Technology (NIST). The CGPM is an international organization established by the Meter Convention in 1875 in which more than 50 countries participate. One of the responsibilities of the CGPM is to ensure the SI reflects the latest advances in science and technology and provides a single international language for measurement. In 2006 the CGPM published changes to the SI in the 8th Edition of the Bureau of International Weights and Measures SI publication commonly known as the ''SI Brochure.'' This notice describes the modifications to the SI and announces the publication of the latest interpretation of the SI for the United States in the 2008 Edition of NIST Special Publication (SP) 330 ''The International System of Units (SI).''

NIST SP 330 describes the history of the Meter Convention, explains how the International System of Units was developed, and describes the global effort to maintain the system. A comprehensive description of the SI's base units, terminology, units and symbols is also provided. A description of the decimal system and the appropriate multiples and submultiples to be used in expressing units and values is included. Also provided are editorial style guidelines to ensure that SI values and units are properly formatted and clearly written. NIST has also published the 2008 Edition of its Special Publication 811 ''Guide for the Use of the International System of Units (SI),'' which includes additional guidance on the use of the SI and a broad range of conversion factors. When used together, these publications provide the most current interpretation of the SI and present the latest guidance on the use of the SI in the United States.

I. Changes to the International System of Units (SI)

The CGPM adopted the following changes in the 8th Edition (2006) of the SI Brochure and these have been

incorporated in the 2008 Edition of NIST SP 330:

a. Full incorporation of the 2000 Supplement which clarified the definition of the second and incorporated the new coherent SI unit with a special name and symbol for the mol s^{-1}, the katal with symbol kat, for expressing values of the quantity catalytic activity;

b. A discussion designated as ''the set of coherent SI units'' was added to clarify that the base and coherent derived units of the SI form a coherent set;

c. New section entitled ''Units for quantities that describe biological effects'' was added in view of their importance for human health and safety;

d. New section entitled ''Historical note'' was added to provide updated information from Section 1.1 of the 7th Edition;

e. Appendix 1 was updated to include all the recent decisions of the CIPM and CGPM which impact the SI;

f. Appendix 2, which discusses the experimental realization of units, is made available only in electronic form on the BIPM Web site at *http://www.bipm.org/en/si/si_brochure/appendix2/*, so that it may be easily updated between SI brochure versions; and

g. New Appendix 3 entitled ''Units for photochemical and photobiological quantities,'' was added to point out that the SI already includes a SI base unit, the candela, which is considered to be a biological effects unit of importance to industry and human health and safety.

II. Modifications to the SI for Its Use in the United States

The 2008 Edition of NIST SP 330 differs from the ''SI Brochure'' to conform to the language and customary use of measurement units in the United States:

a. The spelling of English words is in accordance with the United States Government Printing Office Style Manual, which follows Webster's Third New International Dictionary rather than the Oxford Dictionary. Thus, the spellings ''meter,'' ''liter,'' and ''deca'' are used rather than ''metre,'' ''litre,'' and ''deka'' as in the original BIPM English text;

b. The name of the unit with symbol t is defined according to 1 t = 10^3 kg which is called ''metric ton'' rather than ''tonne;''

c. The four units curie, roentgen, rad, and rem are included in Table 10;

d. A number of Editors' notes are added in order to indicate differences of interpretation and to clarify the text;

e. A few minor editorial changes are made in order to ''Americanize'' some phrases.

This notice supersedes the last interpretation of the SI that was published in the **Federal Register** on July 28, 1998 (Vol. 63, No. 144—FR 40334—40340).

NIST SP 330, NIST SP 811, and other useful information regarding the International System of Units (SI) are published electronically (*http://physics.nist.gov/cuu/Units/index.html* and *http://nist.gov/metric*) and in hard copy. Requests for hardcopies can be sent to: *TheSI@nist.gov*.

Although there is no formal comment period, comments and suggestions on the SI are invited and should be sent to Dr. Ambler Thompson at the address previously indicated.

Dated: May 9, 2008.

James M.Turner,

Deputy Director.

[FR Doc. E8–11058 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Tuesday, June 3, 2008. The Judges Panel is composed of twelve members prominent in the fields of quality, innovation, and performance excellence and appointed by the Secretary of Commerce. The purpose of this meeting is to discuss the Judging process and Judging process changes for 2008; role of Judges' in award process; overview of scoring data; 2008 Baldrige award cycle; the Judges' survey of applicants; and the Judges' mentoring process. The applications under review by Judges contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 3, 2008 at 9 a.m. and adjourn at 4:30 p.m. on June 3, 2008. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 4, 2008, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: May 9, 2008.

James M. Turner,

Deputy Director.

[FR Doc. E8–11034 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 080506632–8633–01]

Codeless and Semi-Codeless Access to the Global Positioning System

AGENCY: Office of Space Commercialization, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Office of Space Commercialization seeks comments on a plan to transition the installed base of codeless and semi-codeless Global Positioning System (GPS) user equipment to next-generation equipment utilizing the modernized civil GPS signals known as L2C and L5. The plan was developed under the auspices of the National Executive Committee for Space-Based Positioning, Navigation, and Timing (PNT). Under the plan, the Department of Defense, as the operator of GPS, will continue

enabling codeless/semi-codeless GPS access until December 31, 2020, by which time the L2C and L5 signals will be available on 24 or more modernized GPS satellites. Users should re-equip to use the modernized signals, since codeless/semi-codeless GPS access cannot be assured beyond 2020.

DATES: Submit comments on or before June 16, 2008.

ADDRESSES: You may submit comments by any of the following methods: E-mail: *jason.kim@noaa.gov*. Fax: (202) 482–4429 (Attn.: Jason Kim). Mail/Courier: Jason Kim, Office of Space Commercialization, U.S. Department of Commerce, 6818 Herbert C. Hoover Building, 14th St. & Pennsylvania Ave., NW., Washington, DC 20230. Due to ongoing delays in mail delivery, respondents are encouraged to submit comments by mail early, or to transmit them electronically. Office hours for courier delivery are 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jason Kim, Senior Policy Analyst, Office of Space Commercialization, U.S. Department of Commerce, (202) 482–5827.

SUPPLEMENTARY INFORMATION: The Global Positioning System (GPS) is a U.S. Government constellation of 24 or more satellites providing precise positioning, navigation, and timing (PNT) capabilities, free of direct user fees, on a continuous, worldwide basis. GPS currently transmits PNT information on two radio frequencies known as L1 (1575 MHz) and L2 (1227 MHz). In the future, GPS will also transmit information on a third frequency known as L5 (1176 MHz).

GPS transmits encrypted signals known as Y-code or P(Y)-code at the L1 and L2 frequencies. Y-code is intended primarily for U.S. and allied military use, but the civilian community has developed techniques that exploit Y-code at L1 and L2 to achieve significant accuracy gains. Such techniques, collectively known as codeless or semi-codeless GPS access, have been integrated into a range of GPS receivers sold commercially around the world.

The Y-code signal was never designed or intended for codeless/semi-codeless access. However, the Department of Defense, as the GPS operator, has historically supported codeless and semi-codeless users by documenting a time-limited commitment to the Y-code signal in the GPS Standard Positioning Service (SPS) Performance Standard and the Federal Radionavigation Plan. For example, the current GPS SPS Performance Standard (dated October 2001) includes the statement that, ''Until such time as a second coded civil GPS signal is operational, the U.S. Government has agreed to not intentionally reduce the current received minimum Radio Frequency signal strength of the P(Y)-coded signal on the L2 link, as specified in ICD–GPS–200C or to intentionally alter the P(Y)-coded signal on the L2 link.'' As a result, manufacturers have continued to develop codeless/semi-codeless GPS equipment.

The U.S. Government acknowledges the global use of GPS codeless and semi-codeless techniques and plans to maintain the existing GPS L1 Y-code and L2 Y-code signal characteristics until such time that an alternative capability exists to replace it. Since 1999, the Department of Defense has worked closely with the civilian agencies on the National Executive Committee for Space-Based PNT (and its predecessor, the Interagency GPS Executive Board) to add new capabilities to GPS that supplant the need for codeless/semi-codeless access. In 2005, the U.S. Air Force began launching modernized GPS satellites featuring a new civil signal at L2 called L2C. L2C is designed to work in combination with the legacy civil signal (called C/A) at L1 to enable high accuracy without codeless/semi-codeless techniques. In 2009, the Air Force will begin adding a third civil signal called L5 to all new GPS satellites. L5 will also work in combination with L1 C/A and/or L2C to enable high accuracy without codeless/semi-codeless techniques.

The National Executive Committee for Space-Based PNT seeks to encourage the development and adoption of next-generation GPS receivers that achieve high accuracy via use of L2C and/or L5 instead of codeless/semi-codeless techniques. To facilitate business decisions and stable planning for equipment developers and end users, the National Executive Committee intends to set a fixed target date for the equipment transition.

The National Executive Committee proposes December 31, 2020, as the target date for transitioning the installed base of codeless/semi-codeless GPS equipment to next-generation capabilities utilizing the modernized civil GPS signals. This date is based upon the current launch schedule for the GPS program, which will have 24 GPS satellites transmitting the L2C signal to users by 2016, and 24 GPS satellites transmitting L5 by 2018. The date is also based on preliminary discussions the Office of Space Commercialization has held with GPS equipment manufacturers. The manufacturers indicated that a transition period of approximately ten years should be sufficient to allow the installed base of codeless/semi-codeless GPS users to re-equip with next-generation receivers as part of their normal equipment amortization, obsolescence, and upgrade cycle.

Should there be unforeseen delays in the GPS modernization program, the National Executive Committee will reassess the target date for the transition.

After the transition date, the characteristics of the Y-code signals transmitted by modernized GPS satellites may change without further notice and may preclude codeless/semi-codeless use of the Y-code signals. However, for those legacy satellites that have no modernized capabilities, codeless/semi-codeless access to Y-code at L1 and L2 will continue until those satellites are decommissioned.

The Office of Space Commercialization encourages the GPS user community and manufacturing industry to provide feedback on this proposed plan within the next 30 days. Both domestic and international comments are welcome due to the global nature of GPS use. The National Executive Committee will take the public comments into account as it prepares a final announcement on the date for the codeless/semi-codeless GPS transition. The Department of Defense will publish the final announcement in the **Federal Register**.

Concurrent with the final transition plan announcement, the Department of Defense intends to release an update to the SPS Performance Standard that no longer includes a reference to Y-code stability in support of codeless/semi-codeless access. The final announcement would serve to document the government's continued commitment to protect codeless/semi-codeless GPS access through the end of the transition period. Specifically, the final announcement would commit the Department of Defense to maintaining the existing GPS L1 Y-code and L2 Y-code signal characteristics until December 31, 2020. The announcement would also state that should there be unforeseen delays in the GPS modernization program, the date will be reassessed.

Instructions for the submission of comments.

Page Limit—Submissions should be limited to a maximum length of four pages.

Identification and Cover Sheet—Mark each page of the submission with the docket number, submitter's name (and

organization, if applicable), date of submission, and contact information (if the submitter chooses to provide it).

Additional information—The Office of Space Commercialization encourages interested persons who wish to comment to do so at the earliest possible time. The Office will consider all comments received before the close of the comment period on June 16, 2008. Consideration of comments received after the end of the comment period cannot be assured. The Office will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying at *http://www.space.commerce.gov.*

Authority: NSPD–39; 10 USC Sec 2281(b)(5).

Dated: May 14, 2008.

Ed Morris,

Director, Office of Space Commercialization.

[FR Doc. E8–11148 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH89

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held June 2–5, 2008.

ADDRESSES: The meetings will be held at the Hilton Hobby Hotel, 8181 Airport Drive, Houston, TX 77061.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–348–1630.

SUPPLEMENTARY INFORMATION:

Committees

Monday, June 2, 2008–CLOSED SESSION

1 pm–5:30 pm–CLOSED SESSION–Budget/Personnel Committee and Full Council will interview and select an Executive Director.

Tuesday, June 3, 2008

8 am–12 pm&1:30 pm–5:30 pm–The Reef Fish Management Committee will meet to discuss Draft of Reef Fish Amendment 30B; Approval of Public Hearing Draft of Reef Fish Amendment 29, including IFQ Referendum Language; Ad Hoc Recreational Red Snapper AP Management and Bycatch Reduction Ideas; Review of NMFS Guidelines for ACL/AMs (if available); SEDAR TOR for Hogfish; and Ecosystem Workshop Report.

5:30 pm–6:30 pm–Informal Question and Answer Session on Gulf of Mexico Fishery Management Issues.

Wednesday, June 4, 2008

8:30 am–10:00 am–The Administrative Policy Committee will meet to discuss Report on Lenfest Annual Catch Limits (ACL's).

10:00 am–12 pm–The Joint Reef Fish/Mackerel/Red Drum Management Committee will meet to discuss the Generic Aquaculture Amendment.

1:30 pm–2:30 pm–The Outreach and Education Committee will meet to discuss Proposed Activities.

2:30 pm–4:30 pm–The Ad Hoc Allocation Committee will meet to discuss Development of Guidelines and Principles for Allocations.

4:30 pm–5:30 pm–The Stone Crab/Spiny Lobster Committee will meet to discuss the Spiny Lobster Scoping Meeting Document.

Council

Thursday, June 5, 2008–The Council meeting will begin at 8:30 am with a review of the agenda and minutes. From 8:45 am–9:45 am on Proposed Rule Integrating Magnuson-Stevens Act and NEPA; From 9:45 am–10:45 am public testimony on exempted fishing permits (EFPs), if any; An Open Public Comment Period regarding any fishery issue of concern will be immediately following completion of public testimony for one hour. People wishing to speak before the Council should complete a public comment card prior to the comment period. The Council will review and discuss reports from the previous two days' committee meetings as follows: 1 pm–3 pm–Reef Fish Management; 3 pm–3:15 pm–Joint Reef Fish/Mackerel/Red Drum; 3:15 pm –3:45 pm–Administrative Policy; 3:45 pm–4 pm–Outreach & Education; 4 pm–4:30 pm–Ad Hoc Allocation; 4:30 pm–4:45 pm–Stone Crab/Spiny Lobster. The Council will discuss Other Business items from 4:45 pm–5:45 pm. The Council will conclude its meeting at 5:45 pm.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the M-SFCMA, those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: May 13, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–10984 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH63

Permits; Foreign Fishing

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

ACTION: Notice of receipt of foreign fishing application; request for comments.

SUMMARY: NMFS publishes for public review and comment information regarding a foreign fishing application submitted under provisions of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by May 30, 2008.

ADDRESSES: Send comments or requests for a copy of the application to NMFS, Office of International Affairs, 1315 East-West Highway, Silver Spring, MD 20910.

Comments on this notice may also be submitted by e-mail to *nmfs.foreignfishing@noaa.gov*. Include in the subject line the following document identifier: RIN 0648–XH63.

FOR FURTHER INFORMATION CONTACT: Christopher Rogers, Office of International Affairs, (301) 713–9090.

SUPPLEMENTARY INFORMATION:

Background

Section 204(d) of the Magnuson-Stevens Act (16 U.S.C. 1824(d)) provides, among other things, that the Secretary of Commerce (Secretary) may issue a transshipment permit which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the U.S. Exclusive Economic Zone (EEZ) or, with the concurrence of a state, within the boundaries of that state to a point outside the United States. In addition, Public Law 104–297, sec. 105(e) directs the Secretary to issue section 204(d) permits for up to 14 Canadian transport vessels to receive Atlantic herring harvested by United States fishermen within the boundaries of the State of Maine or within the portion of the EEZ east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State.

Section 204(d)(3)(D) of the Magnuson-Stevens Act provides that an application may not be approved until the Secretary determines that ''no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated ... an interest in performing the transportation at fair and reasonable rates.'' NMFS is publishing this notice as part of its effort to make such a determination with respect to the application described below.

Summary of Application

NMFS has received an application requesting authorization for 11 Canadian transport vessels to receive transfers of herring from U.S. purse harvesting vessels for the purpose of transporting the herring to processing plants in Canada. The transshipment operations will occur within the boundaries of the State of Maine or within the portion of the exclusive economic zone east of the line 69 degrees 30 minutes west and within 12 nautical miles from the seaward boundary of that State.

Interested U.S. vessel owners and operators may obtain a copy of the complete application from NMFS (see **ADDRESSES**).

Dated: May 9, 2008.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E8–11016 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH75

Marine Mammals; File No. 13392

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Thomas A. Jefferson, NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037, has applied in due form for a permit to conduct research on bottlenose dolphins (*Tursiops truncatus*).

DATES: Written, telefaxed, or e-mail comments must be received on or before June 16, 2008.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 13392.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The proposed research would provide up-to-date information to better understand the levels and impacts of persistent organic pollutants on the California coastal stock of bottlenose dolphins. Up to 60 individuals would be photo-identified and biopsied over the course of the five year permit. Killer whales (*Orcinus orca*), harbor porpoises (*Phocoena phocoena*), and bottlenose dolphins could be incidentally harassed during the proposed research. The sampling would occur mainly in Monterey Bay but may also occur in other locations along California.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 12, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–11017 Filed 5–15–08; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, May 20, 2008, 4 p.m.–5:30 p.m.

PLACE : Corporation for National and Community Service; 8th Floor; 1201 New York Avenue, NW., Washington, DC 20525.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Comments
II. Consideration of Previous Meetings Minutes
III. CEO Report
IV. Committee Reports
- MAG Committee
- Program Committee
- Strategic Partnerships Committee

V. Impact of AmeriCorps Week and the Longitudinal Study
Presentation by Millicent Williams, Executive Director, Serve DC and Sally Prouty, President and CEO of The Corps Network
VI. Public Comments

Accomodations: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m. on Monday, May 19, 2008.

FOR MORE INFORMATION CONTACT: Lisa Guccione, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 10207, 1201 New York Avenue, NW., Washington, DC 20525. Phone (202) 606–6637. Fax (202) 606–3460. TDD: (202) 606–3472. E-mail: *lguccione@cns.gov*.

Dated: May 13, 2008.

Frank R. Trinity,

General Counsel.

[FR Doc. 08–1269 Filed 5–13–08; 4:33 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Environmental Impact Statement/ Environmental Impact Report for the Middle Harbor Redevelopment Project of the Port of Long Beach, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Corps) in coordination with the Port of Long Beach has completed a Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the Middle Harbor Redevelopment project in the Port of Long Beach. The Corps is considering an application for Section 404 and Section 10 permits to conduct dredge and fill activities associated with the proposed consolidation of Piers D, E and F into a single 345-acre marine terminal with a 4,250-foot-long wharf at build-out. This would include redevelopment of 294 acres of existing land, creation of 10.7 acres of new open water and the placement of dredged material in 65.3 acres open water for a net gain of approximately 54.6 acres of new land in the consolidated terminal. The new terminal, which would be constructed over a 10-year time period, is intended to accommodate increasing cargo volumes being produced by the new generation of larger container vessels, and would include four deep-water berths, a container terminal yard, and an intermodal rail yard.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding scoping of the Draft EIS/EIR may be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch, ATTN: File Number 2004–01053–AOA, P.O. Box 532711, Los Angeles, California 90053–2325. Comments or questions can also be sent to Stacey Crouch, Port of Long Beach, P.O. Box 570, Long Beach, CA 90801–0570. Phone messages or questions should be directed to Antal Szijj at 805–585–2147.

Dated: April 29, 2008.

Mark Durham,

Acting Chief, Regulatory Division, Los Angeles District, Corps of Engineers.

[FR Doc. E8–10908 Filed 5–15–08; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for Remediation of Area IV of the Santa Susana Field Laboratory and Conduct Public Scoping Meetings

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) and conduct public scoping meetings under the National Environmental Policy Act (NEPA) for remediation of Area IV of the Santa Susana Field Laboratory (SSFL Area IV). The SSFL, approximately 2,852 acres in the hills between Chatsworth and Simi Valley, CA, was developed as a remote site to test rocket engines and conduct nuclear research. Area IV was established at the SSFL in 1953 and occupies 290 acres of the SSFL. The DOE Energy Technology Engineering Center (ETEC) is located on 90 acres within SSFL Area IV.

DOE is preparing the EIS in part as a response to a May 2, 2007, decision by the U.S. District Court of Northern California that DOE was in violation of NEPA for its 2003 decision to issue a Finding of No Significant Impact (FONSI), and to conduct remediation of the ETEC site, on the basis of an environmental assessment (EA) rather than an EIS.

DOE recognizes the need to follow the NEPA process and will evaluate the range of reasonable alternatives for remediation of SSFL Area IV. DOE will evaluate alternatives for disposition of radiological facilities and support buildings, remediation of the affected environment, and disposal of all resulting waste at existing, approved sites. DOE will consider the cumulative impacts from exposure to chemical and radiological constituents in SSFL Area IV from future land uses.

DOE invites public comment on the scope of this EIS during a scoping period that will end August 14, 2008. During this period, DOE officials will conduct public scoping meetings in the region surrounding the SSFL and in Sacramento, California, to provide the public and other stakeholders with an opportunity to comment on the scope of the EIS. DOE recognizes the value of the public's perspectives, and will inform, involve, and interact with the public during all phases of the EIS process.

DOE is issuing this Notice of Intent (NOI) in order to inform and request comments and assistance from Federal and state agencies, state and local governments, Tribal Nations, natural resource trustees, the general public, and other interested parties on the appropriate scope of the EIS, alternatives, environmental issues, and the environmental impacts related to DOE's remediation activities for SSFL Area IV. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

DATES: The public scoping period starts May 16, 2008 and will continue until August 14, 2008. DOE will consider all comments received or postmarked by August 14, 2008, in defining the scope of this EIS. Comments received or postmarked after that date will be considered to the extent practicable.

ADDRESSES: Public scoping meetings will be held to provide the public with an opportunity to present comments on the scope of the EIS and to learn more about the proposed action from DOE officials. *Public scoping meetings will be held at the following locations on the following days and times:*

- *Simi Valley, California:* Grand Vista Hotel, 999 Enchanted Way, July 22, 2008, 2 p.m. to 4 p.m. and 6:30 p.m. to 9:30 p.m.;
- *Northridge, California:* World Vision Church, 19514 Rinaldi Street, July 23, 2008, 2 p.m. to 4 p.m. and 6:30 p.m. to 9:30 p.m.; and
- *Sacramento, California:* Sacramento Central Library, 828 I Street, July 24, 2008, 2 p.m. to 4 p.m. and 6:30 p.m. to 9:30 p.m.

Written comments on the scope of the EIS should be sent to: Ms. Stephanie Jennings, NEPA Document Manager, U.S. Department of Energy, P.O. Box 10300, Canoga Park, CA 91309, Express Mail Delivery Address: 5800 Woolsey Canyon Road, Canoga Park, CA 91304, telephone number: 818–466–8162, fax: 818–466–8730, or e-mail to *stephanie.jennings@emcbc.doe.gov* (use ''Scoping comments'' for the subject).

All comments whether offered in person at the scoping meeting, or in writing as described above will be considered.

FOR FURTHER INFORMATION CONTACT: To request further information about this EIS or about the public scoping activities, or to be placed on the EIS distribution list, use any of the methods (mail, express mail, fax, telephone, or e-mail) listed under **ADDRESSES** above. For general information concerning 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 20585–0119, e-mail to: *AskNEPA@hq.doe.gov,* telephone: 202–586–4600, leave a message at 1–800–472–2756, or fax: 202–586–7031.

This NOI will be available on the internet at: *http://www.eh.doe.gov/NEPA* and at *http://www.etec.energy.gov,* click on the Area IV EIS link on the toolbar. Further information about SSFL Area IV can be found at *http://www.etec.energy.gov* and click on the SSFL Area IV EIS link in the toolbar.

Reading rooms with information about the SSFL Area IV are available to the public and are located in:

- *Simi Valley, California:* Simi Valley Library, 2969 Tapo Canyon Road, (805) 526–1735;
- *Woodland Hills, California:* Platt Branch Library, 23600 Victory Blvd., (818) 340–9386; and
- *Northridge, California:* California State University Northridge Oviatt Library, 2nd Floor, Room 265, (818) 677–2285.

SUPPLEMENTARY INFORMATION:

Background

SSFL, located on approximately 2,852 acres in the hills between Chatsworth and Simi Valley, CA, was developed as a remote site to test rocket engines and conduct nuclear research. The Atomics International Unit of Rockwell International's Canoga Park-based Rocketdyne Division began testing in 1947. An estimated 17,000 open-air rocket tests that supported the space program were conducted at the site. In 1996, Rockwell International sold its aerospace and defense business, including the SSFL, to The Boeing Company (Boeing).

SSFL is divided into four administrative areas, Areas I, II, III, and IV, and two undeveloped land areas. Area I consists of about 713 acres, including 671 acres that are owned and operated by Boeing and 42 acres that are owned by the National Aeronautics and Space Administration (NASA) and operated for it by Boeing. Area II consists of about 410 acres that are owned by NASA and operated for it by Boeing. Area III consists of about 114 acres that are owned and operated by Boeing. Area IV consists of about 290 acres that are owned by Boeing, a portion of which it operated for the DOE. Boeing also owns a contiguous undeveloped land area of 1,143 acres to the south and a contiguous undeveloped land area of 182 acres to the north.

Starting in the mid-1950s, the Atomic Energy Commission (AEC), a predecessor agency of DOE, funded nuclear energy research on a 90-acre parcel of SSFL Area IV leased from Rocketdyne. ETEC was established by the AEC on this parcel in the early 1960s as a ''center of excellence'' for liquid metals technology.

A total of 10 small reactors were built for various research activities over the years of operation. The most notable of the reactors was the Sodium Reactor Experiment (SRE). SRE was an experimental development-stage sodium-cooled nuclear reactor that operated from April 1957 to February 1964 at the SSFL. SRE was the first commercial nuclear power plant to provide electricity to the public (powering the City of Moorpark in 1957). An accident occurred at the SRE in July 1959 when there was an accidental blockage of sodium coolant in some of the reactor coolant channels resulting in the partial melting of the fuel cladding in 13 of the 43 reactor fuel assemblies. Radioactive gases from the accident were contained within the facility. Over a period of two months, the gases were vented and released to the atmosphere. The controlled releases were always below those levels allowed by requirements in existence both then and today. Following cleanup, the facility was refueled, brought back online, and operated until February 1964. All SSFL reactor operations ended in 1980 and nuclear research work was completed in 1988. Cleanup of ETEC began in the 1960s and was performed in an ongoing manner as unnecessary facilities were decommissioned.

In March 2003, DOE issued an *Environmental Assessment for Cleanup and Closure of the Energy Technology Engineering Center,* DOE/EA–1345. Based on the results of the EA, DOE determined that an EIS was not required and issued a FONSI in March 2003.

Comments on the Environmental Assessment were received by DOE from Federal and State agencies, elected officials, and from local community members. The comments addressed the following concerns:

U.S. Environmental Protection Agency, Region 9 (EPA) said that the EA did not clearly identify the decisions that were to be made, how those decisions related to each other, or how or when the decisions would be made. EPA also expressed concern that the conclusions reached by DOE in the EA were based upon inadequate standards and information. *EPA stated:* ''* * * that the [Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)] process should be used to evaluate and select a cleanup alternative.''

EPA and the State of California Department of Toxic Substances Control (DTSC) criticized the Rocketdyne survey of radiological contamination, which the EA relied upon, as being insufficient for not addressing multiple exposures to radiological contamination, contamination through combinations of radiological and chemical contamination, and contamination from different radionuclides. They also expressed concern that there was no plan to examine SSFL Area IV beyond the 90 acres of ETEC, that groundwater contamination was not addressed, and that there was a failure to address past releases of contamination.

The City of Los Angeles and local community members expressed concern that DOE did not adequately consider the effects of releases and remediation on the surrounding communities.

Senator Barbara Boxer expressed concern with proposed waste disposal methods and with the intention to leave a substantial amount of radioactive soil in place. The Committee to Bridge the Gap criticized DOE for assuming the site would be suitable in the future for residential development. Local community members were concerned with what DOE proposed as an acceptable rate of increased cancer risk.

DOE is now preparing an SSFL Area IV EIS in response to the U.S. District Court of Northern California's May 2, 2007, ruling in the case *Natural Resources Defense Council* v. *Department of Energy* Slip Op. 2007 WL 2349288 (N.D. Cal. Aug. 15, 2007), which held that DOE's decision to issue a FONSI and conduct cleanup and closure on the basis of DOE/EA–1345 was in violation of NEPA. The Court ordered DOE to prepare an EIS for SSFL Area IV in accordance with NEPA. The Court further prevented the DOE from transferring ownership or possession, or otherwise relinquishing control over any portion of SSFL Area IV, until DOE completes the EIS and issues a Record of Decision pursuant to NEPA. In response to requests from DTSC and the California Congressional delegation, DOE suspended the physical demolition and removal activities for the remaining facilities at ETEC, except for those activities necessary to maintain the site in a safe and stable configuration. DOE will continue surveillance, maintenance, and environmental monitoring, including soil and groundwater characterization required under the Resource Conservation and Recovery Act (RCRA), the California Health and Safety Code section 25187, and DOE Orders, while it prepares the EIS.

In addition to the investigation and evaluation of individual soils contamination areas under the requirements of RCRA, DOE, Boeing and NASA also are required to investigate and evaluate the groundwater for development of potential cleanup or interim actions. The EIS will address groundwater contamination and contributors to the contamination related to Area IV. All prior and currently planned interim corrective action activities under the DTSC administered Consent Order are located outside of Area IV and will be evaluated to determine if any impact on the groundwater plumes within Area IV exist.

In August 2007, DTSC issued a RCRA Consent Order to DOE, NASA, and Boeing (as respondents) pursuant to its authority over hazardous waste under the California Health and Safety Code section 25187. This Order requires the respondents to clean up all chemically-contaminated soils at SSFL by 2017 or earlier, provides the option for DTSC to require additional work to be conducted offsite of SSFL Area IV to assess air, soil, and water contamination and requires the preparation of an Environmental Impact Report (EIR), pursuant to the California Environmental Quality Act (CEQA). DTSC may use information in the EIS in its preparation of the EIR.

DOE issued an Advance Notice of Intent (ANOI), 72 FR 58834 (October 17, 2007), to prepare an EIS for SSFL Area IV and to conduct Public Involvement Activities in order to inform and request early comments and assistance. Informal discussions resulting from publication of the ANOI with both members of the public and other stakeholders aided in the development of this NOI.

DOE has conducted interviews with interested parties. The purpose of these interviews was to learn about concerns with the proposed remediation of SSFL Area IV as well as the public's preferences for being involved during the development of the EIS. This broad cross section of individuals includes neighbors of the SSFL, individuals who have been active in previous SSFL actions, former employees, elected and appointed local, state, and Federal officials, representatives of local and national environmental groups, members of local neighborhood associations, organizations, and the business community. This sampling of a wide range of perspectives is enhancing the development of future public involvement activities. The report of these interviews and associated recommendations for improvements in public involvement activities will be posted on the Web site listed in the **FOR FURTHER INFORMATION SECTION** of this NOI.

In October 2007, California Senate Bill 990 (SB 990) was signed into law. SB 990 requires the DTSC to certify that the SSFL has been completely remediated so that the cumulative risk of exposure from residual chemical and radiological contamination does not exceed a risk range premised on future land use of either suburban or rural residential. Until this certification is completed, the land at SSFL cannot be transferred or sold.

In December 2007, the EPA announced the results of a Hazard Ranking Survey it had conducted at SSFL beginning in Spring 2007. Although EPA could not reveal the final score, EPA indicated that the score exceeded the threshold for listing SSFL on the National Priority List for cleanup under CERCLA. Consequently, EPA sent a letter dated December 6, 2007, to the Governor of California requesting his concurrence in the listing. In response, the California Environmental Protection Agency, in a letter dated January 15, 2008, asked that EPA defer for six months the decision regarding whether to propose listing for this site. EPA Region 9 agreed to defer listing SSFL until July 2008.

As part of the FY 2008 appropriations, Congress mandated that DOE shall use a portion of the funding for ETEC to enter into an interagency agreement (IAG) with EPA to conduct a joint comprehensive radioactive site characterization of Area IV and ensure that all aspects of the cleanup of the radioactive contamination comply fully with CERCLA. DOE and EPA are negotiating the terms of the IAG, and the associated scope of the site characterization.

DOE is collecting updated information that it will incorporate into the EIS analysis. A data gap analysis was conducted to evaluate the usability and acceptability of existing data, and to identify any additional data that may be needed to support the EIS. Results of the data gaps analysis will be shared with interested parties in June 2008, and will also be made available on the Web site (*http://www.etec.energy.gov,* click on Area IV EIS in the toolbar) . A follow-on field analysis and sampling plan will be developed and will also be shared with interested parties in August 2008. Dates, locations and times for these workshops on the draft gap analysis and availability of the subsequent draft sampling and analysis plans will be announced through the site mailing list, the local media, and on the Web site. The draft gap analysis, field analysis, and sampling plans will all be available in the public reading rooms listed above. Printed copies of documents may be obtained from Ms. Jennings at the location listed in the above **ADDRESSES** section.

Purpose and Need for Agency Action

DOE needs to complete remediation of SSFL Area IV to comply with applicable requirements and for radiological and hazardous contaminants.

Alternatives

In the EIS, DOE will describe the statutory and regulatory requirements for each remediation alternative and whether legislation or regulatory modifications may be needed to implement the alternative under consideration. The EIS will present the health and environmental consequences

of the alternatives in comparative form to provide a clear basis for informed decision making. In summary, DOE proposes to evaluate the alternatives listed below:

• *Alternative 1:* No Action—This alternative involves the cessation of all DOE management and oversight of SSFL Area IV. The buildings would remain and would not be monitored or maintained. Unmitigated natural processes, including erosion, groundwater transport of contamination and concrete degradation, would be assumed to occur. The purposes of evaluating this alternative are to establish the baseline against which the environmental impacts from all other alternatives are compared and to justify the proposed action. NEPA regulations require analysis of a no action alternative.

• *Alternative 2:* No further cleanup or disposition of buildings and no remediation of contaminated media at SSFL Area IV—DOE would continue environmental monitoring and maintain security of SSFL Area IV.

• *Alternative 3:* Onsite Containment at SSFL Area IV—Containment onsite of buildings, wastes, radiological and chemical contaminants, aligned with potential future land use scenarios including, but not limited to, agricultural, residential, and open space.

• *Alternative 4:* Offsite Disposal of SSFL Area IV Materials—Demolition of buildings, removal of contaminated media aligned with potential future land use scenarios including, but not limited to, agricultural, residential, and open space. Transportation of non-radiological wastes to approved disposal or treatment facilities and radiological wastes to an approved out-of-state disposal facility.

• *Alternative 5:* Combination On-Site/Off-Site Disposal Alternative for SSFL Area IV—Demolition of buildings, on-site containment of contaminated media aligned with potential future land use scenarios including, but not limited to, agricultural, residential, and open space. Transportation of non-radiological wastes from building demolition to approved disposal or treatment facilities and radiological waste from building demolition to an approved, out-of-state disposal facility.

These preliminary alternatives will be refined and further developed as part of the scoping process through public and other stakeholder input.

Preliminary Environmental Impacts for Analysis

DOE has tentatively identified the following environmental impacts for analysis in the SSFL Area IV EIS. This list is presented to facilitate comment during the public involvement activities on the scope of the EIS. *These impacts include:*

• Potential health and safety impacts to the general population, and to workers, and to the environment from radiological and non-radiological releases;

• Potential transportation impacts from the shipment of radiological and non-radiological wastes to disposal sites;

• Potential impacts from accidents that might occur (*e.g.*, accidents associated with removal and transportation of contaminated media);

• Potential impacts from intentional destructive acts;

• Land use impacts;

• Socioeconomic impacts;

• Impacts to ecological resources (endangered and protected species [Braunton's milk-vetch, Santa Susana tarplant, Southern California black walnut, Mariposa lily, Coast Horned Lizard], floodplain and wetlands);

• Cultural, historical and paleontological resources impacts;

• Irretrievable and irreversible commitment of resources;

• Potential disproportionately high and adverse effects on low-income and minority populations (environmental justice); and

• Cumulative impacts from radiological and non-radiological contamination both onsite and offsite of SSFL Area IV, and from both radiological and non-radiological contaminants.

Preliminary Identification of Issues

The following issues have been tentatively identified for consideration in the EIS. This list is not intended to be all-inclusive, but is presented to facilitate public comment during the public scoping period:

• Best methods to obtain accurate information on radiological and hazardous contamination;

• Compliance with applicable Federal, state and local requirements;

• Long-term stewardship and institutional controls; and

• Mitigation measures to avoid or mitigate potentially significant environmental impacts.

Scoping Process

DOE issued an Advance Notice of Intent (ANOI), 72 FR 58834 (October 17, 2007), to prepare an EIS for SSFL Area IV and to conduct public involvement activities in order to inform and request early comments and assistance. Informal discussions resulting from publication of the ANOI with both members of the public and other stakeholders aided in the development of this NOI.

DOE is issuing the NOI, pursuant to 40 CFR 1501.7 and 10 CFR 1021.311, in order to inform and request comments and assistance from Federal and state agencies, state and local governments, natural resource trustees, the general public, and other interested parties on the scope of the EIS, environmental issues, alternatives to be analyzed, and the potential environmental impacts related to DOE's potential activities at this site. The NOI is also being issued to notify the public and other stakeholders of the scoping meetings to be held as described. In addition, DOE will provide progress updates to the public and other stakeholders throughout all phases of the EIS process.

DOE will consult with appropriate Federal and state agencies regarding the environmental and regulatory issues germane to the proposed remediation alternatives for analysis in the EIS and the environmental issues to be analyzed. DOE invites those agencies with jurisdiction by law or special expertise to be cooperating agencies.

Public scoping meetings will be held at the locations and times listed in the **ADDRESSES** section of this Notice.

DOE will designate a presiding officer for the scoping meetings. At the opening of each meeting, the presiding officer will announce procedures necessary for the conduct of the meeting. At the beginning of the scoping meetings, a brief presentation by DOE officials will be given explaining DOE's proposed approach to alternatives, issues to be addressed, and impacts that will be analyzed in the EIS. This presentation will be followed by a question and answer session. Following the question and answer session, the public will be given the opportunity to provide comments orally. This part of the scoping meetings will not be conducted as an evidentiary hearing, and there will be no questioning or cross-examination of the speakers. DOE personnel, however, may ask for clarifications to ensure that they fully understand the comments and suggestions. The presiding officer will establish the order of the speakers, and will ensure that everyone who wishes to speak has a chance to do so. Oral comments will be limited in duration at the discretion of the presiding officer based on the number of commenters and the time available. DOE is especially interested in learning from the public any additional issues or alternatives that should be considered. Comment cards will also be available for those who would prefer to submit written

comments. Persons who wish to speak may sign up to speak before each meeting at the reception desk. Oral and written comments will be considered equally in the preparation of the EIS. See the **ADDRESSES** section of this Notice for the times and locations of these meetings.

DOE will make transcripts of the scoping meetings and other environmental and SSFL Area IV related materials available for public review in the reading rooms listed in the **FOR FURTHER INFORMATION CONTACT** [section of this Notice]. This information will also be available through the project web site at *http://www.etec.energy.gov,* click on Area IV EIS in the toolbar.

Draft EIS Schedule and Availability

DOE will provide a public comment period of at least 45 days from the publication of the EPA's Notice of Availability (NOA) of the Draft EIS in the **Federal Register** and will hold at least one public hearing. DOE will separately announce in the **Federal Register** and local media information on the public hearings schedule and location. DOE expects to issue the Draft EIS in early 2009. Comments on the Draft EIS will be considered and addressed in the Final EIS, which DOE anticipates issuing in the fall 2010. DOE will issue a Record of Decision no sooner than 30 days from EPA's NOA of the Final EIS.

Issued in Washington, DC, on May 13, 2008.

Ines R. Triay,

Acting Assistant Secretary for Environmental Management.

[FR Doc. E8–11033 Filed 5–15–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

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), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, as amended) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, May 29, 2008—8 a.m.–5 p.m.

Opportunities for public participation will be held Thursday, May 29, from 11:45 a.m. to 12 p.m. and from 3 p.m. to 3:15 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: AmeriTel Inn, 645 Lindsay Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, ID 83415. Phone (208) 526–6518; Fax (208) 526–8789 or e-mail: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org.*

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 Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Tour Cleanup Areas/Projects on the Idaho National Laboratory (INL);
- Progress to Cleanup;
- Accelerated Decontaminating and Decommissioning Plan;
- Calcine—Nuclear Regulatory Commission Licensing Update;
- Integrated Waste Treatment Unit Project;
- Savannah River/INL Spent Fuel Transfer.

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 presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request 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 Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.inlemcab.org/meetings.html.*

Issued at Washington, DC on May 12, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–11006 Filed 5–15–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12551–001]

Salvatore and Michelle Shifrin; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 9, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–12551–001.

c. *Date Filed:* January 25, 2008.

d. *Applicant:* Salvatore and Michelle Shifrin.

e. *Name of Project:* Mansfield Hollow Hydro Power Project.

f. *Location:* On the Natchaug River in Tolland County, Connecticut. The project would occupy United States land managed by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Salvatore or Michelle Shifrin, 78 Bricktop Road, Windham, CT 06280, (860) 423–7709.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. Description of Project: The Mansfield Hollow Hydro Power Project would consist of: (1) The existing 80-foot-long, 10-foot-high Kirby Mill Dam; (2) the existing 1.6-acre reservoir; (3) the existing headgate structure; (4) the existing 12-foot-wide, 8-foot-high, 330-foot-long head race channel; (5) a new powerhouse containing five generating units with a total installed capacity of 500 kilowatts; (6) the existing 5-foot-wide, 7-foot-high, 100-foot-long conduit and 75-foot-long open tailrace; and (7) appurtenant facilities. The project would have an average annual generation of about 2,500 megawatt-hours.

In addition to a new powerhouse, project reconstruction would consist of: (1) A new 12-foot-wide, 8-foot-high, 330-foot-long head race channel; (2) a new 20-foot-wide, 8-foot-high, 20-foot-long box culvert connected to a new 25-foot-wide, 4-foot-high, 153-foot-long open channel tail race; and (3) a new 275-foot-long transmission line.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (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. 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.

o. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intents to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Notice of application ready for environmental analysis: September 2008.

Notice of availability of the EA: March 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11026 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2669–061]

Bear Swamp Power Company LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 7, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Revise the Installed Capacity of the Project.

b. *Project No.:* 2669–061.

c. *Date Filed:* March 31, 2008.

d. *Applicant:* Bear Swamp Power Company LLC.

e. *Name of Project:* Bear Swamp Hydroelectric Project.

f. *Location:* On the Deerfield River, in Franklin and Berkshire counties, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Paul Bernhardt, P.E., Brookfield Power Company, 225 Greenfield Parkway, Suite 201, Liverpool, NY 13088, *paul.bernhardt@brookfieldpower.com*, telephone: (315) 413–2750.

i. *FERC Contact:* Mrs. Anumzziatta Purchiaroni, Telephone (202) 502–6191, and e-mail address: *anumzziatta.purchiaroni@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* June 9, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* The licensee is proposing non-capacity upgrades for two existing units at the project. The licensee plans to replace the pump turbine runners and rewind both generators. Consequently, the project's total authorized installed capacity would increase from 610 MW to 676 MW, and hydraulic capacity will increase from 5,430 cfs to 6,200 cfs. The licensee explains that all the work will be done within the existing powerhouse, and there are no planned modifications to the upper or lower reservoirs.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number

field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10954 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1992–003]

Fire Mountain Lodge; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 7, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Existing Minor License.

b. *Project No.:* 1992–003.

c. *Date Filed:* April 25, 2008.

d. *Applicant:* Ken Willis.

e. *Name of Project:* Fire Mountain Lodge.

f. *Location:* On Fern Spring in Tehama County, California. The project is located primarily on privately owned land except for a small portion of the dam and reservoir which is located on U.S. Forest Service land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ken Willis, Fire Mountain Lodge, 43500 Highway 36, Mill Creek, CA 96060, (530) 258–1952.

i. *FERC Contact:* Matt Buhyoff, (202) 502–6824 or *matt.buhyoff@ferc.gov*

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* June 24, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

m. This application is not ready for environmental analysis at this time.

n. The existing Fire Mountain Lodge project consists of: (1) A 265-foot-long earth and concrete filled dam; (2) a 0.24-acre reservoir; (3) a 38 inch intake tower; (4) a 1540-foot-long penstock; (7) a powerhouse with an installed capacity of 60-kilowatts; a (8) a 4000 foot-long transmission line and; (9) appurtenant facilities. The power generated by the project is utilized for commercial and residential purposes, solely for the owners of Fire Mountain Lodge, a self-provider of electricity.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the California State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter—June 2008.

Issue Acceptance letter—June 2008.

Issue Scoping Document 1 for comments—June 2008.

Request Additional Information—July 2008.

Issue Scoping Document 2—August 2008.

Notice of application is ready for environmental analysis—October 2008.

Notice of the availability of the draft EA—April 2009.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10957 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–9–001]

Florida Gas Transmission Company, LLC; Notice of Application To Amend Authorization

May 8, 2008.

Take notice that on May 2, 2008, Florida Gas Transmission Company, LLC (FGT), 5444 Westheimer Road, Houston, Texas 77056, filed in Docket No. CP06–9–001, an application, pursuant to section 7 of the Natural Gas Act (NGA), for an order amending its authorization granted by the Commission in Docket No. CP06–9–000 on May 30, 2006 in order to continue the existing certificate authority for its 18-inch and 24-inch pipelines located in Broward County, Florida and hold in abeyance the abandonment authority for these facilities until newly identified conflicts with planned construction by the Florida Department of Transportation/Florida Turnpike Enterprise are resolved, or for a period not to exceed 36 months, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.

Any questions regarding this application should be directed to Michael T. Langston, Senior Vice President of Government and Regulatory Affairs, Florida Gas Transmission Company, LLC, 5444 Westheimer Road, Houston, Texas 77056 at (713) 989–7610.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, 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: May 29, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10965 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 1, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–83–000.

Applicants: Iberdrola Renewables, Inc., PPM Wind Energy LLC, Aeolus Wind Power IV LLC, Klondike Wind Power III LLC.

Description: Application for Order Under Section 203 of the FPA Authorizing Disposition of Jurisdictional Facilities, and Request for Waivers, Confidential Treatment of Transaction Document and 21-Day Comment Period.

Filed Date: 04/30/2008.

Accession Number: 20080430–5245.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 21, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–1466–005; ER00–814–006; ER00–2924–006; ER02–1638–005.

Applicants: Allegheny Power; Allegheny Energy Supply Company; Green Valley Hydro, LLC; Buchanan Generation, LLC.

Description: Allegheny Power submits a Supplemental Affidavit of Julie R Solomon re their combined triennial market power analysis submitted on 1/14/08.

Filed Date: 04/21/2008.

Accession Number: 20080430–0200.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 6, 2008.

Docket Numbers: ER98–4421–008; ER98–4421–009; ER04–543–004; ER04–543–005; ER99–791–006; ER99–791–005; ER99–3677–007; ER99–3677–008; ER01–570–008; ER01–570–009; ER00–2187–003; ER99–806–005; ER99–806–006; ER00–2187–004.

Applicants: Consumers Energy Company; CMS Energy Resource Management Company; Grayling Generating Station L.P.; CMS Generation Michigan Power, L.L.C.; Dearborn Industrial Generation, L.L.C.; CMS Distributed Power, L.L.C.; Genesee Power Station, LP.

Description: Consumers Energy Company et al submit a notice of non-material change in status and Original Sheet 1 *et al* to FERC Electric Tariff, Third Revised Volume 8.

Filed Date: 04/23/2008.

Accession Number: 20080429–0073.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 14, 2008.

Docket Numbers: ER05–1089–004; ER06–1027–001; EL05–136–002.

Applicants: Wisconsin Public Service Corporation.

Description: Algoma Group *et al* submits an amended Stipulation to the Stipulation filed on 9/20/07.

Filed Date: 04/24/2008.

Accession Number: 20080430–0164.

Comment Date: 5 p.m. Eastern Time on Thursday, May 8, 2008.

Docket Numbers: ER08–676–000.

Applicants: Winnebago Windpower LLC.

Description: Winnebago Windpower LLC requests to withdraw their application for order accepting initial tariff, providing for shortened comment period, waiving regulations, and granting blanket approvals which was filed on 3/17/08.

Filed Date: 04/28/2008.

Accession Number: 20080429–0207.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: ER08–765–001.

Applicants: KD Power Marketing Services, LLC.

Description: KD Power Marketing Services LLC submits an amended application for market-based rate authority.

Filed Date: 04/28/2008.

Accession Number: 20080430–0035.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: ER08–867–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits an Agreement to Amend Joint Operating Agreement Among with PJM Interconnection, LLC etc.

Filed Date: 04/23/2008.

Accession Number: 20080428–0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 14, 2008.

Docket Numbers: ER08–876–000.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corporation submits an executed Back-Up Service Agreement with Eagle River Light and Water Commission designated as Rate Schedule FERC 82, effective 4/22/08.

Filed Date: 04/28/2008.

Accession Number: 20080430–0037.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: ER08–877–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a Notice of Cancellation of the Firm Transmission Service Agreement with the City of Vernon.

Filed Date: 04/28/2008.

Accession Number: 20080430–0038.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Docket Numbers: ER08–878–000.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Power Company *et al* submits the proposed Balancing Area Operations Coordination Agreement designated as Rate Schedule FERC 500 etc, effective 6/27/08.

Filed Date: 04/28/2008.

Accession Number: 20080430–0036.

Comment Date: 5 p.m. Eastern Time on Monday, May 19, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–112–000.

Applicants: Idaho Power Company.

Description: Idaho Power Co submits compliance filing proposing to amend its Open Access Transmission Tariff to include a methodology for distributing penalty revenues associated with Imbalance Penalties, Late Study Penalties etc.

Filed Date: 04/21/2008.

Accession Number: 20080424–0125.

Comment Date: 5 p.m. Eastern Time on Monday, May 12, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–10999 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4656–020]

Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York; Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District; Notice of Availability of Environmental Assessment

May 9, 2008.

An environmental assessment (EA) is available for public review. The EA was prepared for an application filed by Boise-Kuna Irrigation District, *et al.* (licensee) on August 1, 2007, requesting Commission approval of: (1) An extension of time for the commencement of project construction to December 13, 2009, pursuant to Public Law 109–383; (2) changes to dates or time periods specified in license articles relating to actions that would be affected by an amendment; and (3) amendments to project design. The licensee proposes to install two 7.5-megawatt (MW) generating units with a total installed capacity of 15 MW, instead of two, 30–MW generating units with a total installed capacity of 60 MW, as authorized in the March 27, 1989 Order Issuing License. The licensee also proposes to decrease the length of the licensed project's transmission line. Finally, the licensee requests deletion or revision of certain license articles that are related to the proposed design changes. The project would be located at the U.S. Bureau of Reclamation's (Reclamation) existing Arrowrock Dam on the Boise River, in Elmore and Ada Counties, Idaho. Parts of the project would occupy lands managed by Reclamation, the U.S. Corps of Engineers, and the U.S. Forest Service within Boise National Forest.

The EA concludes that the proposed amendment, with staff-recommended mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the e-Library link. Enter the docket number ''P–4656'' in the docket number field to access the document. For assistance, call (202) 502–8222 or (202) 502–8659 (for TTY).

For further information regarding this notice, please contact B. Peter Yarrington at (202) 502–6129.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11027 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–32–000]

Natural Gas Pipeline Company of America; Notice of Availability of the Environmental Assessment for the Proposed Herscher-Galesville Expansion Project

May 9, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the natural gas pipeline facilities proposed by Natural Gas Pipeline Company of America (Natural) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) of 1969. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed project. Natural proposes to add new and modify existing natural gas storage field facilities, and add compression to Compressor Station 201, at its existing Herscher-Galesville Gas Storage Field in Kankakee County, just south of the Town of Herscher, Illinois. Specifically, the project would include:

- Construction of 15 new water withdrawal wells with pumps;
- Construction of 11 new water disposal wells;
- Construction of three booster pumps at existing water disposal wells;
- Up to four lateral recompletions at existing water disposal wells;
- Construction of workover/extensions on five existing gas withdrawal/injection wells;
- Construction of a new 8,180 horsepower (hp) gas-fired engine compressor unit within Compressor Station 201; and
- Replacement, looping or extension of 12 waterlines with 8- to 13-inch-diameter plastic pipelines.

The purpose of this project is to increase the Herscher-Galesville Gas Storage Field's working gas capacity by 10 billion cubic feet and increase the peak day withdrawal capacity. Natural would achieve this increased capacity by constructing facilities to remove water from the field. Reworking of five existing gas withdrawal/injection wells, and construction of the new compressor unit within its existing adjacent Compressor Station 201, would enable Natural to increase peak day withdrawal capacity.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 Code of Federal Regulations 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the link to ''Documents and Filings'' and ''eFiling.'' eFiling is a file attachment process and requires that you prepare your submission in the same manner as you would if filing on paper, and save it to a file on your hard drive. New eFiling users must first create an account by clicking on ''Sign up'' or ''eRegister.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.'' In addition, there is a *''Quick Comment''* option available, which is an easy method for interested persons to submit text only comments on a project. The Quick-Comment User Guide can be viewed at *http://www.ferc.gov/docs-filing/efiling/quick-comment-guide.pdf.*

Quick Comment does not require a FERC eRegistration account; however, you will be asked to provide a valid e-mail address. All comments submitted under either eFiling or the Quick Comment option are placed in the public record for the specified docket or project number(s).

If you are filing written comments, please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2;
- Reference Docket No. CP08–032–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 11, 2008.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11028 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 906–006 (VA)]

Virginia Electric & Power Company; Notice of Availability of Final Environmental Assessment

May 8, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for a new license for the Cushaw Hydroelectric Project, located on the James River, near the Town of Glasgow, Virginia, and has prepared a Final Environmental Assessment (FEA). In the FEA, Commission staff analyze potential environmental effects of relicensing the project and conclude that issuing a new license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. For further information, contact Kristen Murphy at (202) 502–6236.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10959 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

May 8, 2008.

	Docket Nos.
Wheatfield Wind Power Project LLC.	EG08–10–000
Capricorn Ridge Wind II, LLC	EG08–34–000
Texas Gulf Wind LLC	EG08–35–000
Providence Heights Wind, LLC.	EG08–39–000
Ocotillo Windpower, LP	EG08–40–000
Goat Wind, LP	EG08–41–000
Starwood Power-Midway, LLC.	EG08–44–000

Take notice that during the month of April 2008, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations, with the exception of the entity described in Docket No. EG08–10–000, whose Exempt Wholesale Generator status became effective in January 2008. 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10961 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–370–003; EL08–22–000]

Midwest Independent Transmission System Operator, Inc.; Missouri River Energy Services; Western Minnesota Municipal Power Agency; Notice of Filing

May 9, 2008.

Take notice that on May 5, 2008, Missouri River Energy River Services filed a supplement to its April 14, 2008 filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 27, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11022 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–695–001]

New York Independent System Operator, Inc.; Notice of Filing

May 9, 2008.

Take notice that on May 6, 2008, New York Independent system Operator, Inc. filed revisions to it Market Administration and Control Area Services Tariff, pursuant to the Commission's March 7, 2008 Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 27, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11025 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–527–000; ER08–527–001]

Public Service Company of Colorado Notice of Filing

May 7, 2008.

Take notice that on April 17, 2008, Public Service Company of Colorado (PSCo) filed an Offer of Settlement and Settlement Agreement resolving all issues between PSCo and Holy Cross Electric Association, Inc., Grand Valley Rural Power Lines, Inc., and Yampa Valley Electric Association, Inc., with respect to PSCo's February 1 and February 14 filings in the above-captioned proceeding. On April 25, 2008, PSCo filed an Offer of Settlement and Settlement Agreement resolving all issues between PSCo and the City of Burlington, Colorado, and the Town of Center, Colorado, with respect to PSCo's February 1 and February 14 filings in the above-captioned proceeding. Also on April 25, 2008, PSCo filed an Offer of Settlement and Settlement Agreement resolving all issues between PSCo and Aquila, Inc., with respect to PSCo's February 1 and February 14 filings in the above-captioned proceeding.

Any person desiring to intervene or to protest these filings 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 May 16, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10956 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL05–25–006; EL05–26–006; EL05–27–006]

Southern Company Services, Inc.; Notice of Filing

May 9, 2008.

Take notice that on May 5, 2008, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power

Company filed an update on the O&M refund payment to Tenaska and three revised interconnection agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 27, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11021 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5705–000]

Taylor, G. Tom; Notice of Filing

May 8, 2008.

Take notice that on May 1, 2008, G. Tom Taylor filed an application to hold an interlocking positions pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2000), Part 45 of the Commission's Regulations, 18 CFR Part 45 (2005) and the Commission's Order No. 664, 112 FERC ¶ 61,298 (2005).

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 May 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10963 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5703–000]

Wagoner, Gregory E.; Notice of Filing

May 8, 2008.

Take notice that on April 30, 2008, Gregory E. Wagoner filed an application to hold an interlocking positions pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2000), Part 45 of the Commission's Regulations, 18 CFR Part 45 (2005) and the Commission's Order No. 664, 112 FERC ¶ 61,298 (2005).

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 May 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10962 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–656–000]

Shell Energy North America (U.S.), L.P.; Notice of Issuance of Order

May 9, 2008.

Shell Energy North America (U.S.), L.P. (Shell) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity

and ancillary services at market-based rates. Shell also requested waivers of various Commission regulations. In particular, Shell requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Shell.

On May 8, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Shell, 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 (2004). 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 June 9, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Shell 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 Shell, 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 Shell'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. E8–11024 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–636–000; ER08–636–001]

Standard Binghamton LLC; Notice of Issuance of Order

May 9, 2008.

Standard Binghamton LLC (Standard Binghamton) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. Standard Binghamton also requested waivers of various Commission regulations. In particular, Standard Binghamton requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Standard Binghamton.

On May 9, 2008, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Standard Binghamton, 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 (2004). 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 June 10, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Standard Binghamton 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 Standard Binghamton, 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 Standard Binghamton'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. E8–11023 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–6–000]

Columbia Gas Transmission Corporation; Notice of Limited Scoping for the Ohio Storage Expansion Project

May 9, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the Ohio Storage Expansion Project, involving construction and operation of natural gas facilities by Columbia Gas Transmission Corporation (Columbia) in Ashland, Fairfield, Hocking, and Holmes Counties, Ohio. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

On May 1, 2008, Columbia filed a revision to its project that would remove two wells from consideration, thus not affecting two landowners. Further, Columbia would add four additional

wells (Well 12491, Well 12492, Well 12578, and Well 12496) affecting two additional landowners. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (i.e., PF08–6) in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Because the two additional landowners were recently added to our environmental mailing list (after the April 7, 2008 close of scoping), they have not had an opportunity to comment on Columbia's planned project. Therefore, we are opening a limited scoping period directed at these landowners to comment on the project and attaching the original *Notice of Intent to Prepare an Environmental Assessment and Request for Comments on Environmental Issues* to this letter. Please note that this limited scoping period will close on June 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11019 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–187–000]

Equitrans, L.P.; Notice of Request Under Blanket Authorization

May 7, 2008.

Take notice that on April 24, 2008, Equitrans, L.P. (Equitrans), 225 North Shore Drive, Pittsburgh, Pennsylvania 15212, filed in Docket No. CP08–187–000, a prior notice request pursuant to sections 157.205 and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to replace approximately 9.71 miles of Line No. H–152, located in Allegheny and Washington Counties, Pennsylvania, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Equitrans proposes to replace approximately 9.71 noncontiguous miles of 16-inch diameter bare steel pipeline, located in Allegheny and Washington Counties, Pennsylvania, with 16-inch diameter coated steel pipeline. Equitrans estimates the cost of construction to be $22,362,143. Equitrans states that the replacement project is necessitated by the age and condition of the existing bare steel pipeline. Equitrans asserts that there are nine segments planned for replacement.

Any questions regarding the application should be directed to David K. Dewey, Vice President & General Counsel, Equitrans, L.P., 225 North Shore Drive, Pittsburgh, Pennsylvania 15212, at (412) 395–2566 or facsimile at (412) 395–3347.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10955 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–188–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

May 8, 2008.

Take notice that on April 25, 2008, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP08–188–000, a prior notice request pursuant to sections 157.205 and 157.211 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to install and operate a new meter station, located in Pine County, Minnesota, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Northern proposes to install and operate a new meter station to accommodate natural gas deliveries to the Corporate Commission of the Mille Lacs Band of Ojibwe Indians d/b/a Grand Casino Hinckley under a throughput service agreement. Northern proposes to install a skid-mounted station, which will include buildings, a heater, regulators, a meter, and associated piping, fittings, and valves. Northern estimates the cost of construction to be $276,558. Northern states that the new meter station will have the capability of delivering up to 980 MMcf per day.

Any questions regarding the application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs, or Donna Martens, Senior Regulatory Analyst, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or at (402) 398–7138, respectively.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act

(NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10960 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–164–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

May 7, 2008.

Take notice that on April 21, 2008, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP08–164–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon by sale to Sea Robin Pipeline Company (Sea Robin), offshore pipelines designated as Line Nos. 524X–100 and 524X–200 and Tennessee's ownership interest in Line No. 524X–1600, located in offshore Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Tennessee proposes to abandon by sale to Sea Robin, Tennessee's remaining portion of Line No. 524X–100, consisting of a sub-sea tap assembly on a Sea Robin pipeline and approximately 120 feet of twelve-inch diameter pipeline; Line No. 524X–200, consisting of approximately 7.3 miles of twelve-inch diameter lateral pipeline with associated appurtenances; and Tennessee's ownership interest, 8.17%, in Line No. 524X–1600. Tennessee states that Sea Robin cooperated in a plan to return Line Nos. 524X–200 and 524X–1600 to service by allowing a new interconnection to its system. Tennessee asserts that because Tennessee provides comprehensive receipt and delivery points for interruptible shippers, contracts between Tennessee and its customers will not be impacted by the sale.

Any questions regarding the application should be directed to Jay V. Allen, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana, Houston, Texas 77002, at (713) 420–5589 or fax (713) 420–1601 or Juan Eligio, Analyst, Certificates & Regulatory Compliance, at (713) 420–3294 or fax (713) 420–1605.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10958 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–343–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

May 9, 2008.

Take notice that on April 30, 2008, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP08–343–000, a prior notice request pursuant to sections 157.205, 157.208, and 157.212 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct and operate a new receipt point to receive revaporized liquefied natural gas (LNG), located in Evangeline Parish, Louisiana, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Transco proposes to construct and operate a new receipt point on Transco's mainline in Evangeline Parish, Louisiana to receive revaporized LNG from the Cheniere Pass LNG terminal in Cameron Parish, Louisiana by way of the Kinder Morgan Louisiana Pipeline, LLC (KMLP). The facilities Transco proposes to construct will include a 24-inch tap assembly on Transco's 36-inch Mainline B and a 24-inch tap assembly on Transco's 36-inch Mainline C, flow computer, gas chromatograph with building enclosure, flow/pressure control and overpressure protection facilities, valves, and radio communication facilities at the mainline B and C. Transco estimates the cost of construction to be approximately $1.7 million. Transco states that KMLP will reimburse Transco for all costs associated with such facilities. Transco asserts that the new receipt point will provide Transco with the ability to receive up to 600 MMcf/d of revaporized LNG from KMLP.

Any questions regarding the application should be directed to Marg Camardello, Transcontinental Gas Pipe Line Corporation, P. O. Box 1396, Houston, Texas 77251, at (713) 215–3380.

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 C. 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–11020 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Supplemental Notice Announcing Revised Treatment of Initial Electric Market-Based Rate Authorization Filings That Also Request Blanket Section 204 Authorization

May 8, 2008.

On April 3, 2008, the Commission issued a notice stating that, effective April 3, 2008, it would issue a separate combined notice of filing for initial electric market-based rate authorization filings.

Upon further consideration, and effective upon the date of issuance of this supplemental notice, the Commission instead will include initial electric market-based rate authorization filings along with other filings in a combined notice of filing. However, once it is determined that an initial electric market-based rate authorization filing includes a request for blanket authorization, pursuant 18 CFR Part 34, of future issuances of securities and assumptions of liability, it will issue a separate supplemental notice.

By this initiative, the Commission seeks to expedite the process for noticing initial electric market-based rate authorization filings, while also providing notice of requests for blanket authorizations for future issuances of securities and assumptions of liabilities.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10964 Filed 5–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of the Final Site-Wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, NM

AGENCY: U.S. Department of Energy (DOE), National Nuclear Security Administration (NNSA).

ACTION: Notice of Availability.

SUMMARY: NNSA announces the availability of the *Final Site-Wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico* (Final SWEIS) (DOE/EIS–0380). The Final SWEIS analyzes the potential environmental impacts of continuing to operate Los Alamos National Laboratory (LANL) and addresses public comments received on the Draft SWEIS. NNSA's Preferred Alternative for LANL, as identified in the Draft and Final SWEIS, is the Expanded Operations Alternative. The Final SWEIS also evaluates a No Action Alternative and a Reduced Operations Alternative.

DATES: NNSA will not issue Records of Decision based on the SWEIS before 30 days have passed from the publication of this notice of availability.

ADDRESSES: A copy of the Final SWEIS may be obtained by writing to: U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, Attn: NEPA Compliance Officer, Environmental Operations, 528 35th Street, Los Alamos, New Mexico 87544.

Requests for copies of the document may also be sent by facsimile ((505) 845–4239); or by E-mail (*LANL_SWEIS@doeal.gov*) or *LASO.SWEIS@doeal.gov.* The Final SWEIS will also be available on the NNSA Los Alamos Site Office's NEPA Web site at: *http://www.doeal.gov/laso/NEPASWEIS.aspx.* Copies of the Final SWEIS are also available for review at the following locations: The Los Alamos Research Library, West Jemez Road, Los Alamos National Laboratory, Los Alamos, New Mexico; the Office of the Northern New Mexico Citizens Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, New Mexico; and, the Zimmerman Library, Central Avenue, University of New Mexico, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: For general information on NNSA's NEPA process, please contact: Ms. Alice C. Williams, NA–50, NEPA Compliance Officer, U.S. Department of Energy, National Nuclear Security Administration, 1000 Independence Avenue, SW., Washington, DC 20585, or telephone 1–202–586–6847. For general information about the DOE NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The primary purpose and need for continued operation of LANL is to provide support for DOE and NNSA core missions as directed by Congress and the President. NNSA's need to continue operating LANL arises from its obligation to ensure a safe and reliable nuclear weapons stockpile. LANL is also needed to support other Federal agencies, including the Department of Homeland Security. The Final SWEIS analyzed the environmental impacts of operating LANL at different levels. LANL is located in north-central New Mexico and covers an area of about 40 square miles (104 square kilometers). It was established in 1943 as ''Project Y'' of the Manhattan Project with a single mission—to build the world's first nuclear weapons. After World War II ended, Project Y was designated a permanent research and development laboratory and its work was expanded to incorporate a wide variety of assignments in support of other government and civilian programs. LANL is now a multi-disciplinary, multipurpose institution engaged in theoretical and experimental research and development.

DOE issued a Final SWEIS and Record of Decision in 1999 for the continued operation of the laboratory. DOE regulations implementing NEPA require the evaluation of site-wide NEPA analyses every five years to determine their continued applicability; such a five-year evaluation was initiated for the 1999 SWEIS in 2004, and NNSA subsequently decided to prepare a new SWEIS. A new Draft SWEIS was issued in July 2006 for public review and comment over a 75-day period. NNSA considered the comments received on

the Draft SWEIS in preparing the Final SWEIS.

The alternatives evaluated in the Final SWEIS represent a range of operational levels from the minimal reasonable activity levels (Reduced Operations Alternative) to the highest reasonable activity levels that could be supported by current facilities combined with expansion and construction of new facilities (Expanded Operations Alternative). The No Action Alternative would continue current mission support work at LANL and includes actions, facility construction, and other activities for which NEPA analyses have already been completed. All alternatives assumed that NNSA will continue to operate LANL as a national security laboratory for the foreseeable future.

Subsequent Document Preparation: NNSA will consider the environmental impact analysis presented in the Final LANL SWEIS, along with other information, in making decisions regarding the continued operation of LANL. NNSA will wait to issue a ROD for at least 30 days following publication in the **Federal Register** of this notice of availability. It is anticipated that several RODs may be issued based on the Final SWEIS over the next several years. NNSA will publish all RODs in the **Federal Register**.

Signed in Washington, DC, this 4th day of April, 2008.

Thomas P. D'Agostino,

Administrator, National Nuclear Security Administration.

[FR Doc. E8–11007 Filed 5–15–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8567–1, EPA–HQ–OW–2008–0238]

Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed permit issuance.

SUMMARY: EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 today are proposing for public comment the issuance of their 2008 National Pollutant Discharge Elimination System general permits for stormwater discharges from new dischargers engaged in large and small construction activities. Hereinafter, these NPDES general permits will be referred to as ''permit'' or ''2008 construction general permit'' or ''2008 CGP.'' ''New dischargers'' are those who did not file a notice of intent (''NOI'') to be covered under the 2003 construction general permit (''2003 CGP'') before it expired. Existing dischargers who properly filed an NOI to be covered under the 2003 CGP continue to be authorized to discharge under that permit according to its terms. This draft 2008 CGP contains the same limits and conditions as the Agency's 2003 CGP with the exception of a few minor modifications which are detailed below. As proposed, EPA is issuing this CGP for a period not to exceed two (2) years and will make the permit available to new construction activities and unpermitted ongoing activities only.

In addition to proposing this draft CGP, EPA is also requesting comments on the criteria to be used by the Agency to incorporate, by reference, ''qualifying local program requirements'' for erosion and sediment control as provided for in EPA's regulations. Approved qualifying local program requirements can then be incorporated by reference into the Agency's construction general permit. A construction site operator with construction activities within the jurisdiction of the qualifying local program can follow local erosion and sediment control requirements in lieu of complying with comparable erosion and sediment control requirements in EPA's CGP.

DATES: Comments on EPA's proposal, including the draft permit, must be postmarked by June 16, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2008–0238, 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, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA Headquarters West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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: A copy of the draft 2008 CGP and its accompanying fact sheet is available at *www.epa.gov/npdes/stormwater/cgp*. Direct your comments to Docket ID No. EPA–HQ–OW–2008–0238. 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.

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 Water Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Greg Schaner, Water Permits Division, Office of Wastewater Management (Mail Code: 4203M), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., EPA East, Washington, DC 20460; telephone number: (202) 564–0721; fax number: (202) 564–6431; e-mail address: *schaner.greg@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The 2008 construction general permit (''2008 CGP'') would potentially apply to the following construction activities:

Category	Examples of affected entities	North American industry classification system (NAICS) code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Building, Developing and General Contracting	233
	Heavy Construction	234

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition of ''construction activity'' and ''small construction activity'' in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Eligibility for coverage under the 2008 CGP would be limited to operators of ''new projects'' or ''unpermitted ongoing projects.'' A ''new project'' is one that commences after the effective date of the 2008 CGP. An ''unpermitted ongoing project'' is one that commenced prior to the effective date of the 2008 CGP, yet never received authorization to discharge under the 2003 CGP or any other NPDES permit covering its construction-related stormwater discharges. This proposal is limited to those areas where EPA is the permitting authority. A list of eligible areas is included in Appendix B of the draft 2008 CGP.

B. 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.

C. Public Hearings

EPA has not scheduled any public hearings to receive public comment concerning the proposed permit. All persons will continue to have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

D. Finalizing the Permit

After the close of the public comment period, EPA will issue a final permit. This permit will not be issued until after all public comments have been considered and appropriate changes made to the permit. EPA's response to public comments received will be included in the docket as part of the final permit decisions. Once the final permit becomes effective, operators of new and unpermitted ongoing construction projects may seek authorization to discharge by filing a NOI to be covered under the new 2008 CGP. Under EPA's regulations at 40 CFR 122.6, any construction site operator obtaining permit coverage prior to the July 1, 2008 expiration date of the 2003 CGP, automatically remains covered under that permit until the earliest of:

- The operator submits a Notice of Termination, or;
- EPA issues an individual permit or denies coverage under an individual permit for the site's stormwater discharges, or;
- EPA issues a new general permit that establishes procedures for covering

these existing dischargers to obtain coverage under the new general permit and the operator obtains coverage consistent with the procedures detailed in that new general permit.

E. Who Are the EPA Regional Contacts for This Proposed Permit?

For EPA Region 1, contact Thelma Murphy at tel.: (617) 918–1615 or e-mail at *murphy.thelma@epa.gov.*

For EPA Region 2, contact Stephen Venezia at tel.: (212) 637–3856 or e-mail at *venezia.stephen@epa.gov,* or for Puerto Rico, contact Sergio Bosques at tel.: (787) 977–5838 or e-mail at *bosques.sergio@epa.gov.*

For EPA Region 3, contact Garrison Miller at tel.: (215) 814–5745 or e-mail at *miller.garrison@epa.gov.*

For EPA Region 5, contact Brian Bell at tel.: (312) 886–0981 or e-mail at *bell.brianc@epa.gov.*

For EPA Region 6, contact Brent Larsen at tel.: (214) 665–7523 or e-mail at: *larsen.brent@epa.gov.*

For EPA Region 7, contact Mark Matthews at tel.: (913) 551–7635 or e-mail at: *matthews.mark@epa.gov.*

For EPA Region 8, contact Greg Davis at tel.: (303) 312–6314 or e-mail at: *davis.gregory@epa.gov.*

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972–3510 or e-mail at *bromley.eugene@epa.gov.*

For EPA Region 10, contact Misha Vakoc at tel.: (206) 553–6650 or e-mail at *vakoc.misha@epa.gov.*

II. Background of Permit Proposal

A. Statutory and Regulatory History

The Clean Water Act (''CWA'') establishes a comprehensive program ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). The CWA also includes the objective of attaining ''water quality which provides for the protection and propagation of fish, shellfish and wildlife.'' 33 U.S.C. 1251(a)(2). To achieve these goals, the CWA requires EPA to control the discharges through the issuance of National Pollutant Discharge Elimination System (''NPDES'') permits.

Section 405 of the Water Quality Act of 1987 (WQA) added section 402(p) of the Clean Water Act (CWA), which directed EPA to develop a phased approach to regulate stormwater discharges under the NPDES program. EPA published a final regulation in the **Federal Register** on the first phase of this program on November 16, 1990, establishing permit application requirements for ''storm water discharges associated with industrial activity.'' See 55 FR 47990. EPA defined the term ''storm water discharge associated with industrial activity'' in a comprehensive manner to cover a wide variety of facilities. Construction activities, including activities that are part of a larger common plan of development or sale, that ultimately disturb at least five acres of land and have point source discharges to waters of the U.S. were included in the definition of ''industrial activity'' pursuant to 40 CFR 122.26(b)(14)(x). Phase II of the stormwater program was published in the **Federal Register** on December 8, 1999, and required NPDES permits for discharges from construction sites disturbing at least one acre, but less than five acres, including sites that are part of a larger common plan of development or sale that will ultimately disturb at least one acre but less than five acres, pursuant to 40 CFR 122.26(b)(15)(i). See 64 FR 68722.

NPDES permits issued for construction stormwater discharges are required under Section 402(a)(1) of the CWA to include conditions for meeting technology-based effluent limits established under Section 301 and, where applicable, Section 306. Once an effluent limitations guideline or new source performance standard is promulgated in accordance with these sections, NPDES permits are required to incorporate limits based on such limitations and standards. See 40 CFR 122.44(a)(1). Prior to the promulgation of national effluent limitations and standards, permitting authorities incorporate technology-based effluent limitations on a best professional judgment basis. CWA section 402(a)(1)(B); 40 CFR 125.3(a)(2)(ii)(B).

The NPDES regulations, at 40 CFR 122.44(s), authorize EPA to recognize local erosion and sediment control requirements that meet or exceed the requirements in that section as a ''qualifying local program'' (''QLP''). EPA can incorporate any such QLP requirements meeting or exceeding regulatory criteria into the CGP consistent with procedures for permit modifications established at 40 CFR 124.5. Following final incorporation of any QLP into the CGP, construction site operators that are subject to the requirements of the CGP and who are operating within the jurisdiction of a QLP, would then be directed (in the CGP) to follow those qualified local erosion and sediment control requirements in lieu of otherwise applicable erosion and sediment control requirements detailed in the CGP. Other CGP requirements, such as meeting eligibility criteria and standard NPDES permit conditions would still apply to that construction site operator. EPA has not incorporated QLPs into any of its previously issued construction general permits. However, in the interest of implementing this regulation, consistent with the Office of Water's May 8, 2006 memorandum entitled ''Qualifying Local Programs for Construction Site Stormwater Runoff'' (available at *www.epa.gov/npdes/stormwater*), EPA is today proposing draft criteria for incorporating QLPs into this or any future CGPs.

B. Summary of Permit Proposal

EPA proposes to issue the 2008 CGP for a period of not to exceed two years. As proposed, the 2008 CGP will include conditions and limits that would be identical to the 2003 CGP, with the exception that the 2008 CGP only applies to new and unpermitted ongoing construction projects. Discharges from ongoing projects (or ''existing dischargers'') would continue to be covered under the existing 2003 CGP. (However, EPA clarifies that if an operator of a permitted ongoing project transfers ownership of the project, or a portion thereof, to a different operator, that subsequent operator will be required to submit a complete and accurate NOI for a new project under the 2008 CGP.) Although the existing permit expires on July 1, 2008, dischargers who filed notices of intent (NOIs) to be authorized under that permit prior to the expiration date will continue to be authorized to discharge in accordance with EPA's regulations at 40 CFR 122.6. The draft permit proposed here will only apply to dischargers who were not authorized under the 2003 CGP, which includes both ''new projects'' and ''unpermitted ongoing projects.'' Operators of new projects or unpermitted ongoing projects seeking coverage under the 2008 CGP would be expected to use the same electronic Notice of Intent (eNOI) system that is currently in place for the 2003 CGP.

As stated, EPA proposes to issue the 2008 CGP for a period not to exceed two years. As a result of recent litigation brought against EPA concerning the promulgation of effluent limitations guidelines and standards for the construction and development (''C&D'') industry, EPA is required by court order to propose effluent limitations guidelines and new source performance standards (hereinafter, ''effluent guidelines'') for the C&D industry by December 2008, and promulgate those effluent guidelines by December 2009. See *Natural Resources Defense Council, et al.* v. *U.S. Environmental Protection Agency,* No CV—0408307–GH (C.D. Cal.)(Permanent Injunction and

Judgment, December 5, 2006). EPA projects that the Agency may publish a proposed rule ahead of the court-ordered deadlines. If EPA publishes the proposed rule ahead of schedule, this may allow the Agency to promulgate a final rule ahead of schedule as well. The Agency currently hopes to promulgate a final rule as early as the end of this calendar year. However, completion of the tasks necessary to do so is dependent on the timing of numerous future activities and factors associated with the effluent guidelines rulemaking process.

EPA believes it is appropriate to propose a revised CGP once EPA has issued C&D effluent guidelines, and therefore proposes a maximum two-year duration for this permit to coincide with the court-ordered deadlines for the C&D rule. EPA intends to propose and finalize a new, revised CGP sooner, if the C&D rule is promulgated earlier than the date directed by the court. EPA solicits comments on the proposed 2-year duration of this permit.

C. What Is EPA's Rationale for This Permit Proposal?

Since the 2003 CGP expires on July 1, 2008, it is incumbent upon EPA to make available a similar general permit that provides coverage for the estimated 4,000 new dischargers per year commencing construction in the areas where EPA is the permitting authority. Without such a permit vehicle, the only other available option for construction site operators is to obtain coverage under an individual permit. As has been described in the past, issuance of individual permits for every construction activity disturbing one acre or more is infeasible given the resources required for the Agency to issue individual permits. EPA is proposing to issue a CGP that adopts the same limits and conditions of the previous permit (the 2003 CGP) for a limited period of time. This action is appropriate for several reasons. First, as discussed above, EPA is working on the development of a new effluent guideline that will address stormwater discharges from the same industrial activities (*i.e.*, construction activities disturbing one or more acres) as the CGP. Because the development of the C&D rule and the issuance of the CGP are on relatively similar schedules, and the C&D rule will establish national technology-based effluent limitations and standards for construction activities, EPA believes that it is more appropriate to proceed along two tracks to permit construction discharges. The first track entails issuing a CGP for a limited period of time, not to exceed 2 years, that contains the 2003 CGP limits and conditions, but for only operators of new and unpermitted ongoing projects, so that such entities can obtain valid permit coverage for their discharges. The second track involves proposing and issuing a revised 5-year CGP that incorporates the requirements of the new C&D rule shortly after the rule is promulgated.

Second, EPA believes that issuing a substantially revised CGP by July 1, 2008, would be impracticable given the number of unknowns concerning the outcome of the C&D rule. EPA does not believe that it would be appropriate to issue a permit containing technology-based limitations that would be outdated so quickly, given the fact that the C&D rule may be promulgated only a few months after permit issuance. For similar reasons, if EPA had attempted to approximate the requirements of the new C&D rule and incorporate such limits into a new CGP, such a permit would presuppose the outcome of the C&D rule and potentially conflict with the scope and content of the effluent limitation guideline prior to full consideration of public comments. Instead, the Agency believes it is a much better use of Agency resources to wait the short time until after the C&D rule promulgation to issue a revised CGP that is fully reflective of the new effluent limitation guideline. In the meantime, during this relatively short period of time prior to the C&D rule's promulgation and prior to the issuance of the revised CGP that incorporates those standards, EPA is proposing to use the permit limits and conditions in the 2003 CGP as an effective vehicle to control new discharges. EPA notes that it has minimized the amount of time during which the 2008 CGP will remain effective in order to underscore the Agency's intention to issue a revised CGP once the C&D rule is finalized.

Third, EPA found the alternative of allowing the 2003 CGP to expire without a replacement, relying instead on an enforcement discretion approach prior to the issuance of the next permit (similar to the practice used for the NPDES Multi-Sector General Permit (MSGP) for stormwater discharges from industrial activities), to be an unacceptable option for stormwater discharges from construction activities. The CGP potentially has an estimated 4,000 new dischargers per year that seek coverage. EPA has made progress with the regulated community in terms of compliance assistance that would be compromised if a permit is not in place during the interim period prior to the promulgation of the C&D rule. For instance, EPA Regional offices have led substantial efforts to boost compliance with the CGP, resulting in an increased rate of compliance among construction operators. If no permit is made available by July 1, 2008, EPA anticipates that such efforts will be undermined, and the compliance rate may decline. Additionally, the enforcement discretion approach would leave construction operators without a reasonable way to obtain authorization to discharge and would expose them to liability from third party lawsuits for violating the Clean Water Act for unpermitted discharges. A short-term permit that mirrors the existing 2003 CGP addresses these concerns by providing a Federal permit with provisions that have already been reviewed in the previous permit issuance process, and by avoiding any period of time during which dischargers are not able to obtain permit coverage.

D. Significant Changes From 2003 CGP

As discussed above, EPA is proposing to issue the 2008 CGP for a period not to exceed two years. This permit would include the same limits and conditions as the 2003 CGP with the following noteworthy differences:

1. Clarification that eligibility for coverage under the 2008 CGP is limited to operators of new and unpermitted ongoing construction projects.
2. Clarification that operators of ongoing permitted construction projects are not eligible for coverage under the 2008 CGP.
3. Removal of eligibility for operators in Tribal Lands in Maine from the list of areas in Appendix B where this permit is effective.

E. Geographic Coverage

EPA is only authorized to provide permit coverage for classes of discharges that are outside the scope of a State's NPDES program authorization. EPA Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 are proposing to issue the 2008 CGP to replace the expiring 2003 CGP for operators of new and unpermitted ongoing construction projects. The geographic coverage and scope of the 2008 CGP are listed in Appendix B of the draft permit. The only change from the scope of coverage in the 2003 CGP is that the State of Maine is now the permitting authority for all discharges in the State, including operators in Tribal Lands, and as such, discharges in the State of Maine are no longer eligible for coverage under EPA's CGP.

III. Proposed QLP Approval Criteria

EPA is requesting public comment on a set of criteria for use in approving QLPs. EPA developed the criteria based

on the QLP regulatory elements identified in 40 CFR 122.44(s). *These regulatory elements include the following:*

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. (A stormwater pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved State, Tribal or local requirements, maintenance procedures, inspection procedures, and identification of non-stormwater discharges);

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts; and

(v) For large construction activities only, any additional requirements necessary to achieve the applicable technology-based standards of ''best available technology'' and ''best conventional technology'' based on the best professional judgment of the permit writer.

Using these regulatory elements, EPA has developed a draft set of criteria to review local erosion and sediment control requirements in an objective and systematic manner. EPA is proposing to use the following list of criteria to determine whether local programs meet the basic elements in 122.44(s). EPA notes that these criteria are presented in a summary format. During the actual evaluation of candidate local programs, EPA will need to assess in greater detail whether the local requirements meet or exceed the requirements in the applicable section of the CGP that is in effect at the time of the evaluation.

I. *Erosion and Sediment Control*

a. Sediment controls (*e.g.*, perimeter controls, protection of storm drain inlets, location of stockpiles away from storm drainage conveyance), collection of sediment on paved areas to prevent it from entering storm drains.

b. Off-site, vehicle tracking of sediments (*e.g.*, establish site entrances and exits).

c. Sediment pond, or similar level of control, for sites greater than 10 acres.

d. Erosion controls (*e.g.*, minimize disturbed areas, phase construction activity, blankets, mulches, divert stormwater flowing onto and through property away from disturbed areas).

e. Temporary stabilization (*e.g.*, stabilize areas of exposed soil where construction activity has temporarily ceased).

f. Final stabilization.

II. *Control of Other Wastes*—To prevent contamination of construction stormwater, the following wastes must be controlled:

g. Solid waste management (*e.g.*, trash cans, dumpsters, material handling. and storage areas).

h. Concrete truck washout (*e.g.*, designate concrete controlled washout areas).

i. Sanitary waste (*e.g.*, portable toilets).

j. Spill prevention and response procedures (*e.g.*, for petroleum products, chemicals, etc.).

III. *Develop a Stormwater Pollution Prevention Plan*

k. Project description (*e.g.*, nature of construction, dates and sequence of construction, site operator information, identification of potential pollutant sources).

l. Site map(s).

m. Description of all erosion, sediment, other waste controls.

n. Operation and maintenance procedures for erosion and sediment controls.

o. Routine self-inspections.

p. Train employees and subcontractors on the implementation of controls.

IV. Submit Site Plan for Review

q. Submit site plan or entire SWPPP to the qualified local program for review.

EPA anticipates that although a program may not meet all of the criteria listed above, it still may be approved as a QLP for those parts of the program that do meet the criteria. In such a situation, the CGP would specify which requirements would be included in the QLP requirements and which ones would be subject to the CGP requirements.

EPA invites comments on the draft criteria for approving QLPs. EPA specifically encourages commenters to suggest modifications to the wording of the criteria, where necessary, and/or to recommend other criteria that EPA should use. In addition, EPA invites the public to suggest candidate local programs that could be considered as a QLP. EPA also asks for recommendations on how the process for identifying, approving, and implementing QLPs can work effectively.

IV. Compliance With the Regulatory Flexibility Act

A. EPA's Approach to Compliance With the Regulatory Flexibility Act for General Permits

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

The legal question of whether a general permit (as opposed to an individual permit) qualifies as a ''rule'' or as an ''adjudication'' under the Administrative Procedure Act (APA) has been the subject of periodic litigation. In a recent case, the court held that the CWA Section 404 Nationwide general permit before the court did qualify as a ''rule'' and therefore that the issuance of that general permit needed to comply with the applicable legal requirements for the issuance of a ''rule.'' *National Ass'n of Home Builders* v. *U.S. Army Corps of Engineers*, 417 F.3d 1272, 1284–85 (DC Cir. 2005) (Army Corps general permits under Section 404 of the Clean Water Act are rules under the APA and the Regulatory Flexibility Act; ''Each NWP [nationwide permit] easily fits within the APA's definition ''rule.* * * As such, each NWP constitutes a rule * * *'').

As EPA stated in 1998, ''the Agency recognizes that the question of the applicability of the APA, and thus the RFA, to the issuance of a general permit is a difficult one, given the fact that a large number of dischargers may choose to use the general permit.'' 63 FR 36489, 36497 (July 6, 1998). At that time, EPA ''reviewed its previous NPDES general permitting actions and related statements in the **Federal Register** or elsewhere,'' and stated that ''[t]his review suggests that the Agency has generally treated NPDES general permits effectively as rules, though at times it has given contrary indications as to whether these actions are rules or permits.'' *Id.* at 36496. Based on EPA's further legal analysis of the issue, the Agency ''concluded, as set forth in the proposal, that NPDES general permits are permits [*i.e.*, adjudications] under the APA and thus not subject to APA rulemaking requirements or the RFA.'' *Id.* Accordingly, the Agency stated that ''the APA's rulemaking requirements are

inapplicable to issuance of such permits,'' and thus ''NPDES permitting is not subject to the requirement to publish a general notice of proposed rulemaking under the APA or any other law * * * [and] it is not subject to the RFA.'' *Id.* at 36497.

However, the Agency went on to explain that, even though EPA had concluded that it was not legally required to do so, the Agency would voluntarily perform the RFA's small-entity impact analysis. *Id.* EPA explained the strong public interest in the Agency following the RFA's requirements on a voluntary basis: ''[The notice and comment] process also provides an opportunity for EPA to consider the potential impact of general permit terms on small entities and how to craft the permit to avoid any undue burden on small entities.'' *Id.* Accordingly, with respect to the NPDES permit that EPA was addressing in that **Federal Register** notice, EPA stated that ''the Agency has considered and addressed the potential impact of the general permit on small entities in a manner that would meet the requirements of the RFA if it applied.'' *Id.*

Subsequent to EPA's conclusion in 1998 that general permits are adjudications rather than rules, as noted above, the DC Circuit recently held that Nationwide general permits under section 404 are ''rules'' rather than ''adjudications.'' Thus, this legal question remains ''a difficult one'' (*supra*). However, EPA continues to believe that there is a strong public policy interest in EPA applying the RFA's framework and requirements to the Agency's evaluation and consideration of the nature and extent of any economic impacts that a CWA general permit could have on small entities (*e.g.,* small businesses). In this regard, EPA believes that the Agency's evaluation of the potential economic impact that a general permit would have on small entities, consistent with the RFA framework discussed below, is relevant to, and an essential component of, the Agency's assessment of whether a CWA general permit would place requirements on dischargers that are appropriate and reasonable. Furthermore, EPA believes that the RFA's framework and requirements provide the Agency with the best approach for the Agency's evaluation of the economic impact of general permits on small entities. While using the RFA framework to inform its assessment of whether permit requirements are appropriate and reasonable, EPA will also continue to ensure that all permits satisfy the requirements of the Clean Water Act. Accordingly, EPA has committed to operating in accordance with the RFA's framework and requirements during the Agency's issuance of CWA general permits (in other words, the Agency has committed that it will apply the RFA in its issuance of general permits as if those permits do qualify as ''rules'' that are subject to the RFA).

B. Application of RFA Framework to Proposed Issuance of CGP

EPA has concluded, consistent with the discussion in Section IV.A above, that the proposed issuance of the 2008 CGP could affect a substantial number of small entities. In the areas where the CGP is effective (see Section II.E), (those areas where EPA is the permit authority), an estimated 4,000 construction projects per year were authorized under the 2003 CGP, a substantial number of which could be operated by small entities. However, EPA has concluded that the proposed issuance of the 2008 CGP is unlikely to have an adverse economic impact on small entities. The draft 2008 CGP includes the same requirements as those of the 2003 CGP. Additionally, an operator's use of the CGP is volitional (*i.e.*, a discharger could apply for an individual permit rather than for coverage under this general permit) and is less burdensome than an individual NPDES permit. EPA intends to include an updated economic screening analysis with the issuance of the next CGP.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 7, 2008.

Ira Leighton,

Acting Regional Administrator, EPA Region 1.

Dated: May 8, 2008.

Walter Mugden,

Director, Division of Environmental Planning & Protection, EPA Region 2.

Dated: May 6, 2008.

Carl-Axel P. Soderberg,

Division Director, Caribbean Environmental Protection Division, EPA Region 2.

Dated: May 7, 2008.

Jon M. Capacasa,

Director, Water Protection Division, EPA Region 3.

Dated: May 7, 2008.

Tinka Hyde,

Acting Director, Water Division, EPA Region 5.

Dated: May 8, 2008.

William H. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

Dated: May 8, 2008.

William A. Spratlin,

Director, Water, Wetlands and Pesticides Division, EPA Region 7.

Dated: May 8, 2008.

Debra H. Thomas,

Deputy Assistant Regional Administrator, Office of Partnerships & Regulatory Assistance, EPA Region 8.

Dated: May 6, 2008.

Alexis Strauss,

Director, Water Division, EPA Region 9.

Dated: May 7, 2008.

Michael Gearheard,

Director, Office of Water and Watersheds, EPA Region 10.

[FR Doc. E8–10997 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6698–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2) (c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact

statements (EISs) was published in FR dated April 11, 2008 (73 FR 19833).

Draft EISs

EIS No. 20070344, ERP No. D–FHW–B40172–VT, Circ-Williston Transportation Project, Improvements between I–89 and the Towns Williston and Essex and the Village of Essex Junction, City of Burlington, Chittenden County, VT.

Summary: EPA has environmental objections to the proposed Circ A–B alternatives based on environmental impacts to wetlands, water resources and storm water, air quality, indirect and cumulative impacts and hydrologic impacts. EPA also noted that the VT 2A alternatives appear to include the least environmentally damaging practicable alternative. Rating EO2.

EIS No. 20080010, ERP No. D–FHW–E40819–00, US–231/I–10 Connector Project HPP–1602–(507), Proposal to Build Limited Access Facility from US 231 North of Dothan to the Alabama/Florida State Line, Dale, Houston, Geneva Counties, AL.

Summary: EPA expressed environmental concerns about impacts related to noise, aquatic resources and community impacts, as well as to the 100-year floodplains. Rating EC2.

EIS No. 20080038, ERP No. D–BLM–J65507–WY, West Antelope Coal Lease Application (Federal Coal Lease Application WYW163340), Implementation, Converse and Campbell Counties, WY.

Summary: EPA expressed environmental concerns about impacts to air quality based on monitored data, wildlife habitat and wetlands. The final EIS should address these issues, and include mitigation for air quality and wetlands where applicable. Rating EC2.

EIS No. 20080043, ERP No. D–FTA–K39111–HI, Lahaina Small Boat Harbor Ferry Pier Project, To Build a New Inter-island Ferry Pier, Maui, Hawaii.

Summary: EPA expressed environmental concerns about the proposed project related to dredging, water quality, habitat, and cumulative impacts. In particular, EPA is concerned that the document does not discuss how the dredging and construction associated with the project will be performed and the impacts of those methods. Rating EC2.

EIS No. 20080091, ERP No. D–AFS–J65513–WY, Winter Elk Management Programs, Long-Term Special Use Authorization for Wyoming Game and Fish Commission to use National Forest System Land within the Bridger-Teton National Forest at Alkali Creek, Dog Creek, Fall Creek, Fish Creek, Muddy Creek, Patrol Cabin, and Upper Green River, Jackson and Sublette, WY.

Summary: EPA expressed environmental concerns about potential impacts to water quality resulting from stream bank damage, erosion, and sedimentation. EPA requested that the Final EIS provide additional information on existing water quality conditions and consider additional mitigation to reduce potential impacts. Rating EC2.

EIS No. 20080111, ERP No. D–COE–E09811–00, WITHDRAWN–PROGRAMMATIC—Hydropower Rehabilitations, Dissolved Oxygen and Minimum Flow Regimes at Wolf Creek Dam, Kentucky and Center Hill and Dale Hollow Dams, Tennessee, Implementation.

Summary: Officially withdrawn by the preparing agency. Rating NW.

EIS No. 20080129, ERP No. D–FHW–J40182–UT, Layton Interchange Project, Improvements on I–15 (Exit-330) to Provide Unrestricted Access Across the Unicon Pacific Railroad and to Address Traffic Congestion on Gentile St. in West Layton, Layton City, UT.

Summary: While EPA has no objections to the proposed action, EPA did request clarification of the air quality analysis. Rating LO.

Final EISs

EIS No. 20070458, ERP No. F–FHW–B40086–CT, CT 82/85/11 Corridor Transportation Improvements, Selected Preferred Alternative, is a Modification of Alternative 4(E), Funding and COE Section 404 Permit, In the Towns of Salem, Montville, East Lyme and Waterford, CT.

Summary: EPA has environmental objections to the proposed project about the evaluation of alternatives, the significance of impacts on the aquatic ecosystem, and compensatory mitigation issues.

EIS No. 20080099, ERP No. F–FHW–E40778–NC, US 74 Shelby Bypass Transportation Improvements, Preferred Alternative is 21, Construction, Funding and COE Section 404 Permit, Cleveland County, NC.

Summary: EPA expressed environmental concerns about the impacts to streams, potential prime farmland impacts, potential impacts to the protection of surface water quality within a protected water supply watershed and indirect and cumulative impacts. EPA is also concerned that impacts from mobile source air toxics were not addressed.

EIS No. 20080102, ERP No. F–BLM–K65323–00, Yuma Field Office (YFO) Resource Management Plan, Provide Direction Managing Public Lands, Implementation, Yuma, La Paz and Maricopa Counties, AZ and Imperial and Riverside Counties, CA.

Summary: The final EIS addressed EPA's comments; therefore, EPA does not object to the project.

EIS No. 20080131, ERP No. F–AFS–K65332–CA, Eldorado National Forest Public Wheeled Motorized Travel Management Project, Proposes to Regulate Unmanaged Public Wheeled Motor Vehicle, Implementation, Alphine, Amador, El Dorado, and Placer Counties, CA.

Summary: EPA continues to have environmental concerns about the potential adverse impacts on water quality and sensitive resources. As the plan is implemented we continue to recommend eliminating routes in sensitive and easily damaged, high elevation habitat.

EIS No. 20080094, ERP No. FS–AFS–L65453–ID, North Sheep Allotments—Sheep and Goat Allotment Management Plans, Additional Information on Analyses Concerning Management Indicator Species, Capable and Suitable Grazing Lands, and Adaptive Management Strategies, Authorization of Continued Sheep Grazing for Fisher Creek, Smiley Creek, North Fork-Boulder and Baker Creek Sheep and Goat Grazing Allotments, Sawtooth National Forest, Ketchum Ranger District, Sawtooth National Recreation Area, Blaine and Custer Counties, ID.

Summary: While EPA supports adaptive management we have concerns that the monitoring necessary to implement adaptive management may not be implemented. Providing an indication that funding will be available for the adaptive management is recommended.

EIS No. 20080127, ERP No. FS–FHW–J40135–MT, US 93 Highway Ninepipe/Ronan Improvement Project, from Dublin Gulch Road/Red Horn Road, Funding, Special-Use Permit, NPDES Permit and U.S. Army COE Section 404 Permit, Lake County, MT.

Summary: EPA has environmental concerns with the proposed project regarding impacts to wetlands and aquatic habitat, as well as impacts to wildlife and wildlife movement. Additional information is needed to

fully assess and mitigate all potential impacts of the management actions.

Dated: May 13, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–11069 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6698–8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly Receipt of Environmental Impact Statements

Filed May 5, 2008 Through May 9, 2008

Pursuant to 40 CFR 1506.9.

EIS No. 20080181, Draft EIS, FAA, OH, Port Columbus International Airport (CMH) Project, Replacement of Runway 10R/28L, Development of a New Passenger Terminal and other Associated Airport Projects, Funding, City of Columbus, OH, Comment Period Ends: 07/11/2008, Contact: Katherine Jones 734–229–2958.

EIS No. 20080182, Final EIS, AFS, NM Perk-Grindstone Fuel Reduction Project, To Protect Life, Property, and Natural Resources, Village of Ruidoso, Lincoln National Forest, Lincoln County, New Mexico, Wait Period Ends: 06/16/2008, Contact: Ron Hannan 575–434–7245.

EIS No. 20080183, Final EIS, FHW, 00, US–131 Improvement Study, from the Indiana Toll Road (I–80/90) to a Point One Mile North of Cowling Road, U.S. Army COE Section 404 Permit, St. Joseph County, MI and Elkhart County, IN, Wait Period Ends: 06/16/2008, Contact: David T. Williams 517–702–1820.

EIS No. 20080184, Draft EIS, FHW, IA, I–29 Improvements in Sioux City, Construction from Burlington Northern Santa Fe Rail Road (BNSF) Bridge over the Missouri River to Existing Hamilton Boulevard Interchange, Woodbury County, IA, Comment Period Ends: 06/30/2008, Contact: Philip Barnes 515–233–7300.

EIS No. 20080185, Draft Supplement, FSA, 00, Programmatic—Expansion of the Emergency Conservation Program, To Restore Farmland (Cropland, Hayland and Pastureland) to a Normal Productive State after a Natural Disaster, Comment Period Ends: 06/30/2008, Contact: Matthew Ponish 202–720–6853.

EIS No. 20080186, Draft EIS, FAA, NV, City of Mesquite, Proposed Replacement General Aviation Airport, Implementation, Clark County, NV, Comment Period Ends: 07/03/2008, Contact: Barry Franklin 650–876–2778.

EIS No. 20080187, Final EIS, AFS, MT, Marten Creek Project, Proposed Timber Harvest, Prescribed Fire Burning, Watershed Restoration, and Associated Activities, Cabinet Ranger District, Kootenai National Forest, Sanders County, MT, Wait Period Ends: 06/16/2008, Contact: John Head 406–827–3533.

EIS No. 20080188, Final EIS, IBW, CA, Programmatic—Tijuana River Flood Control Project, Proposing a Range of Alternatives for Maintenance Activities and Future Improvements, San Diego County, CA, Wait Period Ends: 06/16/2008, Contact: Daniel Borunda 915–832–4767.

EIS No. 20080189, Final EIS, NSA, NM, Continued Operations of Los Alamos National Laboratory, Proposal to Expand Overall Operational Levels, (DOE/EIS–0380), Site Wide, Los Alamos County, NM, Wait Period Ends: 06/16/2008, Contact: Elizabeth Withers 505–665–0308.

EIS No. 20080190, Draft Supplement, USA, 00, Programmatic—Army Growth and Force Structure Realignment, Evaluation of Alternatives for Supporting the Growth, Realignment, and Transformation of the Army to Support Operations in the Pacific Theater, Implementation, Nationwide and the Pacific Region of AK, HI, Comment Period Ends: 06/30/2008, Contact: Mike Ackerman 410–436–2522.

EIS No. 20080191, Final Supplement, AFS, MT, Fishtrap Project, Updated Information on Past Maintenance/Restorative Treatments within Old Growth Stands, Timber Harvest, Prescribed Burning, Road Construction and Other Restoration Activities, Lolo National Forest, Plains/Thompson Falls Ranger District, Sanders County, MT, Wait Period Ends: 06/30/2008, Contact: Randy Hojem 406–826–4308.

EIS No. 20080192, Draft EIS, AFS, MT, Sheppard Creek Post-Fire Project, Timber Salvage, Implementation, Flathead National Forest, Flathead and Lincoln Counties, MT, Comment Period Ends: 07/01/2008, Contact: Bryan Donner 406–758–3508.

Amended Notices

EIS No. 20080106, *Draft EIS, AFS, CO,* Long Draw Reservoir Project, Re-Issue a Special-Use-Authorization to Water Supply and Storage to Allow the Continued Use of Long Draw Reservoir and Dam, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Grand and Larimer Counties, CO, Comment Period Ends: 06/11/2008, Contact: Ken Tu 970–295–6623. Revision of FR Notice Published 03/28/2008: Extending Comment Period from 05/12/2008 to 06/11/2008.

EIS No. 20080163, Draft EIS, AFS, AK, Withdrawn—Spencer Mineral Materials Project, Proposal to Develop and Extract Quarry Rock and Gravel from a Site near Spencer Glacier, Chugach National Forest, Kenal Borough, AK, Comment Period Ends: 06/16/2008, Contact: Alice Allen 605–673–4853. Revision to FR Notice Published 05/02/2008: Officially Withdrawn by the Preparing Agency.

EIS No. 20080171, Draft EIS, NOA, WA, Proposed Authorization of the Makah Indian Tribe's Request to Hunt Gray Whales in the Tribe's Usual and Accustomed Fishing Grounds off the Coast of Washington, Comment Period Ends: 07/08/2008, Contact: Donna Darm 206–526–6150. Revision to FR Notice Published 05/09/2008: Correction to Title and Comment Period from 07/07/2008 to 07/08/2008.

Dated: May 13, 2008.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E8–11009 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0046; FRL–8361–6]

Notice of Filing of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number EPA–HQ–OPP–2008–0046 and the pesticide petition number (PP) of interest, by one of the following methods:

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

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

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

Instructions: Direct your comments to EPA–HQ–OPP–2008–0046 the assigned docket ID number and the pesticide petition number of interest. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available 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 are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: The person listed at the end of the pesticide petition summary of interest.

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. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Docket ID Numbers

When submitting comments, please use the docket ID number and the pesticide petition number of interest, as shown in the table.

PP Number	Docket ID Number
PP 7E7258	EPA–HQ–OPP–2008–0049
PP 7E7337	EPA–HQ–OPP–2008–0270
PP 8E7314	EPA–HQ–OPP–2008–0258
PP 8E7324	EPA–HQ–OPP–2008–0271
PP 8E7340	EPA–HQ–OPP–2008–0272
PP 1F6299	EPA–HQ–OPP–2008–0276
PP 7F7200	EPA–HQ–OPP–2007-0337

PP Number	Docket ID Number
PP 7F7263	EPA–HQ–OPP–2008–0261
PP 7F7274	EPA–HQ–OPP–2008–0262
PP 8E7340	EPA–HQ–OPP–2008–0272
PP 8E7315	EPA–HQ–OPP–2008–0254
PP 5F6945	EPA–HQ–OPP–2008–0275

III. What Action is the Agency Taking?

EPA is printing notice of the filing of pesticide petitions received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA rules on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions included in this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

New Tolerance

1. *PP 7E7258*. (EPA–HQ–OPP–2008–0049). Interregional Research Project Number 4 (IR-4), 500 College Rd., East, Suite 201W, Princeton, NJ 08540, proposes to establish a tolerance for residues of the fungicide triflumizole, 1-[1-((4-chloro-2-(trifluoromethyl) phenyl)imino)-2 propoxyethyl]-1H-imidazole, and its metabolites containing the 4-chloro-2-trifluoromethylaniline moiety in or on the food commodities leafy greens subgroup 4A, except spinach and cilantro at 35 parts per million (ppm); turnip, greens at 40 ppm; swiss chard at 18 ppm; pineapple at 4.0 ppm; papaya; sapote, black; canistel; sapote, mamey; mango; sapodilla; star apple at 2.5 ppm; and hop, dried cones at 50.0 ppm. The analytical method is suitable for analyzing crops for residues of triflumizole and its aniline containing metabolites at the proposed tolerance levels and has been independently validated. Residue levels of triflumizole are converted to FA-1-1 by acidic and alkaline reflux, followed by distillation. Residues are then extracted and subjected to SPE purification. Detection and quantitation are conducted by gas chromatograph equipped with nitrogen phosphorus detector, electron capture detector or mass spectrometry detection. The limit of quantitation of the method has been determined in the range of 0.01 ppm to 0.05 ppm for the combined residues of triflumizole and FA-1-1. The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Contact: Susan Stanton, (703) 305–5218, *stanton.susan@epa.gov*.

2. *PP 7E7337*. (EPA–HQ–OPP–2008–0270). Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to establish a tolerance for residues of the fungicide (plant activator), acibenzolar S-methyl in or on the food commodity onion, bulb, subgroup 3-07A at 0.07 ppm. Syngenta Analytical Method AG-671A is a practical and valid method for the determination and confirmation of acibenzolar S-methyl (CGA245704) in raw agricultural commodities (RAC) and processing substrates from the tobacco, leafy (including brassica) and fruiting vegetable crop groups at a limit of quantitation (LOQ) of 0.02 ppm. Based on recoveries of dry bulb onion samples fortified at the lower limit of method validation, the limit of detection and LOQ were calculated as 0.013 and 0.040 ppm, respectively. The method involves extraction, solid phase cleanup of samples with analysis by high performance liquid chromatography (HPLC) with ultraviolet (UV) detection or confirmatory liquid chromatography/mass spectrometry (LC/MS). The validity is demonstrated by the acceptable accuracy and precision obtained on numerous procedural recovery samples (radiovalidation and field trial sample sets), and by the extractability and accountability obtained by the analysis of weathered radioactive substrates using Analytical Method AG-671A. Contact: Susan Stanton, (703) 305–5218, *stanton.susan@epa.gov*.

3. *PP 8E7324*. (EPA–HQ–OPP–2008–0271). Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to establish a tolerance for residues of the insecticide indoxacarb, (S)-methyl 7-chloro- 2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2e] [1,3,4]oxadiazine-4a(3H)-carboxylate, and its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno [1,2-e] [1,3,4] oxadiazine-4a(3H)- carboxylate in a 75:25 mixture (DPX-MP062), respectively, in or on the food commodities Bushberry subgroup 13-07B at 1.5 ppm; beet, garden, roots at 0.3 ppm; and beet, garden, tops at 6.0 ppm. The plant residue enforcement method detects and quantitates indoxacarb in various matrices including sweet corn, lettuce, tomato, broccoli, apple, grape, cottonseed, peanut, and soybean commodity samples by HPLC with UV detection. The limit of quantitation in the method allows monitoring of crops with indoxacarb residues at or above the levels proposed in these tolerances. Contact: Susan Stanton, (703) 305–5218, *stanton.susan@epa.gov*.

4. *PP 8E7314*. (EPA–HQ–OPP–2008–0258). Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance for residues of the fungicide dimethomorph, (E,Z)4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]-morpholine in or on the food commodities bean, lima at 0.6 ppm; ginseng at 0.85 ppm; grape at 3.5 ppm; grape, raisin at 6.0 ppm; and turnip, greens at 20 ppm. A reliable method for the determination of dimethomorph residues in bean, lima; ginseng; grape; grape, raisin; and turnip, greens exists; this method is the FDA Multi-Residue Method, Protocol D, as published in the Pesticide Analytical Manual I. Contact: Sidney Jackson, (703) 305–7610, *jackson.sidney@epa.gov*.

5. *PP 8E7340*. (EPA–HQ–OPP–2008–0272). Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes to establish a tolerance for the combined residues of the insecticide spiromesifen, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3, 3-dimethylbutanoate and its enol metabolite 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, calculated as the parent compound equivalents in or on the food commodities: Corn, sweet, kernel plus cob with husks removed at 0.02 ppm; corn, sweet, forage at 6.0 ppm; corn, sweet, stover at 7.0 ppm; and berry and small fruit, low growing berry, subgroup 13-07G at 2.0 ppm. Adequate analytical methodology using liquid chromatography/mass spectrometry detection is available for enforcement purposes. Contact: Sidney Jackson, (703) 305–7610, *jackson.sidney@epa.gov*.

6. *PP 1F6299*. (EPA–HQ–OPP–2008–0276). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014,

Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide iodosulfuron-methyl-sodium, methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-ureidosulfonyl]benzoate, sodium salt in or on the food commodities wheat, grain at 0.02 ppm; wheat, forage at 0.06 ppm; wheat, straw at 0.05 ppm; and wheat, hay at 0.05 ppm. An enforcement procedure is available whereby extractable residues of iodosulfuron-methyl-sodium and AE F075736 are removed from crops by blending with acetonitrile. After blending, the extract is filtered, reduced in volume and partitioned with hexane to remove oils. The partially cleaned up extract is evaporated to dryness under reduced pressure; dissolved in dichloromethane and further cleaned-up on a series of solid phase extraction columns, first, silica gel, then Bond Elut(tm) ENV, and finally on polyamide 6S. The extract is again concentrated to dryness and reconstituted in either 70/30 deionized water/acetonitrile for analysis by high performance liquid chromatography/mass spectrometry (HPLC-MS/MS), or in 50/50 deionized water/acetonitrile for analysis by HPLC/Ultraviolet (HPLC/UV). Contact: Hope Johnson, (703) 305–5410, *johnson.hope@epa.gov*.

7. *PP 7F7200*. (EPA–HQ–OPP–2007–0337). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to revise tolerances for residues of the insecticide cyfluthrin; cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate in or on the food commodities barley, grain; buckwheat, grain; millet, grain; oats, grain; rye, grain; triticale, grain; and wheat, grain at 0.15 ppm; corn, field, grain; corn, pop, grain; teosinte, grain; and corn, sweet, kernel plus cob with husks removed at 0.05 ppm; sorghum, grain at 3.5 ppm; grain, cereal, forage, group 16 (except rice) at 25.0 ppm; grain, cereal, stover, group 16 (except rice) at 30.0 ppm; grain, cereal, hay, group 16 (except rice) at 6.0 ppm; and grain, cereal, straw, group 16 (except rice) at 7.0 ppm; and beta-cyfluthrin; cyano(4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropanecarboxylate [mixture comprising the enantiomeric pair (R)-α-cyano-4-fluoro-3-phenoxybenzyl (1S,3S)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate and (S)-α-cyano-4-fluoro-3-phenoxybenzyl (1R,3R)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate with the enantiomeric pair (R)-α-cyano-4-fluoro-3-phenoxybenzyl (1S,3R)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate and (S)-α-cyano-4-fluoro-3-phenoxybenzyl (1R,3S)-3-(2,2-dichlorovinyl)-2,2-dimethylcyclopropanecarboxylate] in or on the food commodities: Alfalfa, forage at 5.0 ppm; alfalfa, hay at 13 ppm; barley, bran at 0.5 ppm; barley, grain at 0.15 ppm; beet, sugar, dried pulp at 1.0 ppm; beet, sugar, roots at 0.10 ppm; brassica, head and stem, subgroup 5A at 2 5 ppm; buckwheat, grain at 0.15 ppm; carrot, roots at 0.20 ppm; cattle, fat at 2.0 ppm; cattle, meat at 0.10 ppm; cattle, meat byproducts at 0.10 ppm; citrus, dried pulp at 0.3 ppm; citrus, oil at 0.3 ppm; corn, field, grain at 0.05 ppm; corn, sweet, kernel plus cob with husks removed at 0.05 ppm; cotton, hulls at 2.0 parts ppm; cotton, refined oil at 2.0 ppm; cotton, seed at 1.0 ppm; egg at 0.01 ppm; fruit, citrus, group 10 at 0.2 ppm; goat, fat at 2.0 ppm; goat, meat at 0.05 ppm; goat, meat byproducts at 0.05 ppm; grain, cereal, forage, fodder and hay, group 16, forage, except rice at 25 ppm; grain, cereal, forage, fodder and hay, group 16, hay except rice at 6.0 ppm; grain, cereal, forage, fodder and hay, group 16, stover, except rice at 30 ppm; grain, cereal, forage, fodder and hay, group 16, straw, except rice at 7.0 ppm; grass, forage, fodder and hay, group 17, forage at 12 ppm; grass, forage, fodder and hay, group 17, hay at 50 ppm; hog, fat at 0.5 ppm; hog, meat at 0.01 ppm; hog, meat byproducts at 0.01 ppm; hop, dried cones at 20.0 ppm; hop, vine at 4.0 ppm; horse, fat at 2.0 ppm; horse, meat at 0.05 ppm; horse, meat byproducts at 0.05 ppm; lettuce, head at 2.0 ppm; lettuce, leaf at 3.0 ppm; milk at 0.2 ppm; milk, fat at 5.0 ppm; millet, grain at 0.15 ppm; mustard greens at 7.0 ppm; oat, bran at 0.5 ppm; oat, grain at 0.15 ppm; pea, dry, seed at 0.15 ppm; pea, southern, succulent at 0.25 ppm; pepper at 0.50 ppm; potato at 0.01 ppm; poultry, fat at 0.01 ppm; poultry, meat at 0.01 ppm; poultry, meat byproducts at 0.01 ppm; radish, roots at 1.0 ppm; rye, bran at 0.5 ppm; rye, grain at 0.15 ppm; sheep, fat at 2.0 ppm; sheep, meat at 0.05 ppm; sheep, meat byproducts at 0.05 ppm; sorghum, grain, at 3.5 ppm; soybean, forage at 8.0 ppm; soybean, hay at 4.0 ppm; soybean, seed at 0.03 ppm; sugarcane, cane at 0.05 ppm; sugarcane, molasses at 0.20 ppm; sunflower, forage at 5.0 ppm; sunflower, seed at 0.02 ppm; teosinte, grain at 0.05 ppm; tomato at 0.20 ppm; tomato, paste at 0.5 ppm; tomato, pomace at 5.0 ppm; triticale, grain at 0.15 ppm; wheat, bran at 0.5 ppm; wheat milled by product, except flour at 5.0 ppm; and wheat, grain at 0.15 ppm. Adequate analytical methodology using gas chromatography/electron capture (GC/EC) detection is available for enforcement purposes. Contact: Olga Odiott, (703) 308–9369, *odiott.olga@epa.gov*.

8. *PP 7F7263*. (EPA–HQ–OPP–2008–0261). Syngenta Crop Protection, Inc. P.O. Box 18300; Greensboro, NC 27419-8300, proposes to establish a tolerance for residues of the insecticide emamectin benzoate, 4'-epi-methylamino- 4'-deoxyavermectin B_1 benzoate (a mixture of a minimum of 90% 4'-epi-methylamino-4'-deoxyavermectin B_{1a} and a maximum of 10% 4'-epi-methlyamino-4'deoxyavermectin B_{1b} benzoate), and its metabolites 8,9 isomer of the B_{1a} and B_{1b} component of the parent insecticide in or on the food commodities tree nuts (Crop Group 14) and pistachios at 0.02 ppm; and almond hulls at 0.25 ppm. Adequate analytical methods (HPLC-fluorescence methods) are available for enforcement purposes. Contact: Thomas Harris, (703) 308–9423, *harris.thomas@epa.gov*.

9. *PP 7F7274*. (EPA–HQ–OPP–2008–0262). Bayer CropScience, P. O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the insecticide spiromesifen, (2-oxo-3-2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3,3-dimethylbutanoate and its enol metabolite 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, calculated as parent compound in or on the food commodity corn, field forage at 6.0 ppm. Adequate analytical methodology using LC/MS/MS detection is available for enforcement purposes. Contact: Amer Al-Mudallal, (703) 605–0566, *al-mudallal.amer@epa.gov*.

Amendment to Existing Tolerance

PP 8E7340. (EPA–HQ–OPP–2008–0272). Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to delete the existing tolerance in 40 CFR 180.607 for the combined residues of the insecticide spiromesifen, 2-oxo-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-4-yl 3, 3-dimethylbutanoate and its enol metabolite; 4-hydroxy-3-(2,4,6-trimethylphenyl)-1-oxaspiro[4.4]non-3-en-2-one, calculated as the parent compound equivalents in or on the food commodity strawberry at 2.0 ppm since residues of spiromesifen on strawberry will be covered by the new tolerance proposed for berry and small fruit, low growing berry, subgroup 13-07G elsewhere in this document. Contact:

Sidney Jackson, (703) 305–7610, *jackson.sidney@epa.gov*.

New Exemption from Tolerance

1. *PP 8E7315*. (EPA–HQ–OPP–2008–0254). Rhodia, Inc. c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192, proposes to establish an exemption from the requirement of a tolerance for residues of the oxirane, 2-methyl-, polymer with oxirane, mono [2-[2-(2-butoxymethylethoxy)methylethoxy] methylethyl] ether (CAS Reg. No. 926031–36–9), under 40 CFR 180.960 when used as an inert ingredient in pesticide formulations. Because this petition is a request for an exemption from the requirement of a tolerance, no analytical method is required. Contact: Karen Samek, 703-347-8825, *samek.karen@epa.gov*

2. *PP 5F6945*. (EPA–HQ–OPP–2008–0275). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, proposes to establish an exemption from the requirement of a tolerance for residues of the herbicide iodosulfuron-methyl-sodium methyl 4-iodo-2-[3-(4-methoxy-6-methyl-1,3,5-triazin-2-yl)-ureidosulfonyl]benzoate, sodium salt, in or on the food commodity soybean. As shown in the confined rotational crop study, no residues of iodosulfuron-methyl-sodium or its degradates are taken up by soybeans planted 7 days after application; thus no residues would be expected in soybeans planted several months after application. As this petition is a request for an exemption from the requirement of a tolerance analytical methods are not required. Contact: Hope Johnson, (703) 305–5410, *johnson.hope@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 16, 2008.

Daniel Kenny,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–10915 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA—New England Region I—EPA–R01–OW–2008–20215; FRL–8566–8]

Massachusetts Marine Sanitation Device Standard—Receipt of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice—receipt of petition.

SUMMARY: Notice is hereby given that a petition has been received from the state of Massachusetts requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Salem Sound in the towns of Manchester-by-the-Sea, Beverly, Danvers, Salem, and Marblehead.

DATES: May 16, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OW–2008–0215 by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

- *E-mail: rodney.ann@epa.gov.*
- *Fax:* (617) 918–0538.

Mail and hand delivery: U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m.–5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R01–OW–2008–0212. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office is open from 8 a.m.–5 p.m., Monday through Friday, excluding legal holidays. The telephone number is (617) 918–1538.

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, One Congress Street, Suite 1100, COP, Boston, MA 02114–2023. Telephone: (617) 918–1538, Fax number: (617) 918–0538; e-mail address: *rodney.ann@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that a petition has been received from the state of Massachusetts requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area within the following boundaries:

Waterbody/General area	Latitude	Longitude
Southern Landward boundary—Marblehead town line	42°28′43″ N	70°52′45″ W
Southern Seaward boundary	42°26′33″ N	70°49′05″ W
Eastern boundary—Halfway Rock	42°30′10″ N	70°46′30″ W
Northern Seaward boundary—3 miles off Eastern Point	42°33′03″ N	70°36′06″ W
Northern Landward boundary—Manchester town line	42°34′20″ N	70°42′52″ W

The proposed NDA boundary includes the municipal waters of Manchester-by-the-Sea, Beverly, Danvers, Salem, and Marblehead and extends to the boundary between state and federal waters. This area includes the islands of Bakers Island, Crowninshield Island, Cat Island, Children's Island, Great and Little Misery Islands, and House Island.

There are approximately 19 marinas, 14 yacht clubs and five public landings/piers in the proposed area. Massachusetts has certified that there are eight pumpout facilities within the proposed area available to the boating public and two additional facilities pending. In addition, there will be a pumpout facility on the Beverly Pier once the area has been redeveloped. The majority of facilities are connected directly into the local wastewater treatment system. A list of the facilities, phone numbers, locations, and hours of operation is provided at the end of this petition.

Massachusetts has provided documentation indicating that the total vessel population is estimated to be 7,000 in the proposed area. It is estimated that 3,590 of the total vessel population may have a Marine Sanitation Device (MSD) of some type.

The Trustees of Reservations manages three conservation properties within the area, Crowninshield Island, Misery Islands, and the Coolidge Reservation. The Salem Maritime National Historical Site is located within the area. There are forty-two beaches located within the proposed No Discharge Area. The proposed area has a variety of rich natural habitats, and supports a wide diversity of species. Both recreational and commercial fishermen use the area for fisheries for mackerel, striped bass, blue fish and flounder.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Name	Location	Contact Info.	Hours	Mean low water depth
Manchester Marine	Manchester	(978) 526–7911 VHF 72.	Mon–Thurs—7 a.m.–6 p.m. Fri–Sun (+holidays) 7 a.m.–8 p.m.	6 ft
Manchester Marine	Manchester	(978) 526–7911 VHF 72.	Mon–Thurs—7 a.m.–6 p.m. Fri–Sun (+holidays) 7 a.m.–8 p.m.	N/A Boat service
Ferry Way Public Landing	Beverly	(978) 921–6059 VHF 9.	Fri–Sun (+holidays) 8 a.m.–4 p.m.	10 ft
Danversport Yacht Club	Danvers (2 facilities)	(978) 774–8644	Mon–Thurs—8 a.m.–5 p.m. Fri–Sat—8 a.m.–6 p.m. Sun—8 a.m.–4 p.m.	6 ft
Salem Waterfront (Winter Island).	Salem	(978) 741–0098 VHF 9.	Sat–Sun (+holidays) 9 a.m.–5 p.m.	N/A Boat service
Congress St. Landing	Salem	(978) 741–0098 VHF 9.	24 hours/7 days a week	3 ft
Ferry Lane—Harbormaster's office.	Marblehead	(781) 631–2386 VHF 16.	Mon–Fri—9 a.m.–3 p.m.	N/A Boat service
Cliff Street Boatyard	Marblehead	(781) 631–2386 VHF 16.	24 hours/7 days a week	9 ft
Pending				
** Danvers	Danvers	TBD	TBD	N/A Boat service
** Salem	Salem	TBD	TBD	N/A Boat service
** Beverly Pier	Beverly	TBD	TBD	TBD

** = Pending facilities.

Dated: May 9, 2008.

Robert W. Varney,

Regional Administrator, New England Region.

[FR Doc. E8–10998 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0344; FRL–8363–1]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0344, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0344. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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.

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

FOR FURTHER INFORMATION CONTACT: Chris Pfeifer, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0031; e-mail address: *pfeifer.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• 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. 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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Application Form

File Symbol: 52991-EE. *Applicant*: Bedoukian Research, Inc.; 21 Finance Drive, Danbury, CT 06810-4192. *Product name*: Bedoukian e,e-9,11-Tetradecadienyl Acetate Technical Pheromone. Pheromone / attractant. *Active ingredient*: (E9,E11) 9,11-Tetradecadien-1-OL Acetate at 94%.

Proposal classification/Use: Manufacturing Use.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: May 6, 2008.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–11001 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1082; FRL–8364–2]

Sulfluramid; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellation, voluntarily requested by the registrant and accepted by the Agency, of products containing the pesticide sulfluramid, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a December 19, 2007 **Federal Register** Notice of Receipt of Request from the sulfluramid registrant to voluntarily cancel the last remaning sulfluramid manufacturing-use product (MUP) registration. In the December 19, 2007 notice, EPA indicated that it would issue an order implementing the cancellation, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests, or unless the registrant withdrew their request within this period. The Agency did not receive any comments on the notice. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellation. This cancellation order does not cancel the remaining end-use sulfluramid products currently registered for use in the United States. Any distribution, sale, or use of the sulfluramid products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective May 16, 2008.

FOR FURTHER INFORMATION CONTACT: Rosanna Louie, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0037; fax number: (703) 308–8005; e-mail address: *louie.rosanna@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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–2007–1082. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces the cancellation, as requested by the sole technical registrant, of the last registered sulfluramid manufacturing-use product (MUP) registered under section 3 of FIFRA. Table 1 in this unit describes the registration information of the affected product.

TABLE 1.—SULFLURAMID PRODUCT CANCELLATION

EPA Registration Number	Product Name
352–710	Finitron Brand Sulfluramid Termite MUP

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit by EPA company number.

TABLE 2.—REGISTRANT OF THE CANCELED SULFLURAMID PRODUCT

EPA Company Number	Company Name and Address
352	DuPont Crop Protection, P.O. Box 30, Newark, DE 19714–0030

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the December 19, 2007 **Federal Register** notice announcing the Agency's receipt of the request for voluntary cancellation of sulfluramid.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation of sulfluramid registration identified in Table 1 of Unit II. Accordingly, the Agency orders that the sulfluramid product registration identified in Table 1 of Unit II. is hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and

which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stocks provisions.

This notice announces EPA's order to cancel the final sulfluramid MUP registration, which is identified in Table 1 of this notice. Since DuPont (the only seller) has no existing stocks, EPA is not allowing any further sale or distribution of the MUP. However, this request does not cancel the remaining end-use sulfluramid products (the remaining registered use is for termite control) currently registered in the U.S. End-use registrants may continue to reformulate any existing stocks of the MUP currently in their possession until December 31, 2012.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 7, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–10919 Filed 5–15–08; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: Evaluation of Healthy People 2010 Users—New—Office of the Assistant Secretary for Planning and Evaluation (ASPE)).

Abstract: Office of the Assistant Secretary for Planning and Evaluation (ASPE), Office of Disease Prevention and Health Promotion (ODPHP) is seeking OMB approval to conduct a short survey using a self-administered questionnaire of state, local, and tribal health organizations. The survey will be administered through mail and respondents will have the option to complete the survey as a web-based electronic survey. *Healthy People 2010 (HP2010)* is an important Federal initiative that establishes national health promotion and disease prevention goals. *HP2010* represents the third of a series of publications by HHS that specifies ten-year health objectives for the nation. Its overarching goals are to increase the quality and years of healthy life and eliminate health disparities.

HP2010 consists of 28 primary focus areas and 467 measurable health objectives designed to identify the most significant preventable threats to health and to establish public health priorities. The central theme of *HP2010* focuses on the role of communities and community partnerships in promoting healthy living in the U.S. *HP2010* is a powerful force in the effort to promote health and prevent disease in the U.S. The agenda reflects extensive consultation with over 350 national organizations, 250 state agencies, health experts, and the public.

HHS is eager to document the utilization of *HP2010*, and to seek input from key users on how the next iteration of the initiative, *Healthy People 2020*, could be improved to encourage greater involvement. This study will identify examples of effective strategies and approaches to using *HP2010*, and, where possible, the short-term results of those efforts.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
State Healthy People Coordinators (Frame A)	51	1	15/60	13
State Chronic Disease Program Directors (Frame A)	51	1	15/60	13
Local Health Organizations (Frame B)	300	1	15/60	75
Tribal Health Organizations (Frame C)	100	1	15/60	25
Total				126

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–11031 Filed 5–15–08; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0281]

Agency Information Collection Request; 60–Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Prevention Communication Formative Research—Revision—OMB No. 0990–0281—Office of Disease Prevention and Health Promotion.

Abstract: The information collected will be used as formative research to develop messages and materials, in support of development of disease prevention and health promotion information, including the Physical Activity and Dietary Guidelines for Americans. It is necessary to obtain consumer input to better understand the informative needs, attitudes, and beliefs of the audience in order to tailor messages, as well as to assist with clarity, understandability, and acceptance of prototyped messages, materials, and online tools. This generic clearance request describes data collection activities involving a limited set of consumer interviews, focus groups, Web concept testing, message testing, and usability testing. Frequency, reporting and on occasion. The program is requesting a three year clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Data collection task	Instrument/form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total response burden
In depth interviews (Limited Literacy Consumers).	Screener	133	1	10/60	22
	Interview	33	1	1.5	50
	Confidentiality Agreement	33	1	5/60	3
In depth Interviews (Health Intermediaries).	Screener	75	1	10/60	13
	Interview	25	1	1.5	38
	Confidentiality Agreement	25	1	5/60	2
In depth Interviews (Public Health Professionals).	Screener	50	1	10/60	8
	Interview	25	1	1.5	38
	Confidentiality Agreement	25	1	5/60	2
In person Focus Groups (35)—Limited Literacy Consumers.	Screener	372	1	10/60	62
	Focus Group	93	1	2	186
	Confidentiality Agreement	93	1	5/60	8
In Person Focus Groups (20)—Health Intermediaries.	Screener	159	1	10/60	27
	Focus Group	53	1	2	106
	Confidentiality Agreement	53	1	5/60	4
In person Focus Groups (15)—Public Health Professionals.	Screener	80	1	10/60	13
	Focus Group	40	1	2	80
	Confidentiality Agreement	40	1	5/60	3
Usability and other testing of prototype materials (print and Web).	Screener	400	1	10/60	68
	Usability Test	100	1	1.5	150
	Confidentiality Agreement	100	1	5/60	8
Web-based concept and prototype testing.	Screener	0	1	0	0
	Web-test	167	1	1	167
	Confidentiality Agreement	167	1	5/60	14
In person message testing	Screener	200	1	10/60	33
	Message Test	50	1	1	50
	Confidentiality Agreement	50	1	5/60	4
Telephone-based message testing	Screener	268	1	10/60	45
	Telephone Test	67	1	1	67
	Confidentiality Agreement	67	1	5/60	6
Web-based message testing	Screener	0	1	10/60	0
	Web-test	115	1	1	115
	Confidentiality Agreement	115	1	5/60	10
TOTAL					1,402

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–11032 Filed 5–15–08; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 30-day notice]

Agency Information Collection Request. 30–Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection 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.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Proposed Project: Evaluation of the ''I Can Do It, You Can Do It'' Health Promotion Program for Children and Youth with Disabilities—New—Office on Disability (OD).

Abstract: The Department of Health and Human Services' Office on Disability (OD) oversees the implementation and coordination of disability programs, policies, and special initiatives pertaining to the over 54 million persons with disabilities in the United States. As part of these efforts, the OD encourages youth with physical and cognitive disabilities to adopt a healthier life style that includes good nutrition and increased physical activity. ''I Can Do it, You Can Do It'' is a health promotion intervention program for children and youth between the ages of 10 and 21 with disabilities that employs a one-on-one mentoring approach to change health behaviors. The program is implemented by sponsoring organizations who work with children and youth with disabilities. The OD will evaluate the effectiveness of the program.

The evaluation will be completed over a two-year period. Respondents will be children and youth with disabilities who are participating in the program. Mentors who work with the participants/mentees will complete a post-program survey. Coordinators from the sponsoring organizations will complete a process evaluation survey. Results will be used to determine if the program has been successful, to report progress, and to make revisions for future administration of the program. There are no costs to respondents except their time to participate in the surveys.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response (in hours)	Total burden hours
Registration Form	Program Participant/Mentee	660	1	8/60	88
Goal Setting Worksheet	Program Participant/Mentee	610	1	7/60	71
Mentor Registration Form	Mentor	450	1	10/60	75
Pre-Test Survey	Program Participant/Mentee	560	1	19/60	177
Weekly Check-In Form	Program Participant/Mentee	560	8	7/60	522
First Post-Test Survey	Program Participant/Mentee	510	1	18/60	153
Second Post-Test Survey	Program Participant/Mentee	460	1	18/60	138
Mentor Post Assessment	Mentor	450	1	15/60	112
Agency Coordinator Survey	Agency Coordinators	6	1	45/60	4.5
Total					1340.5

Terry Nicolosi,

Office of the Secretary, Director, Office of Resources Management .

[FR Doc. E8–11045 Filed 5–15–08; 8:45 am]

BILLING CODE 4150–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Hospital Preparedness Program (HPP)

AGENCY: Office of the Assistant Secretary for Preparedness and Response, ASPR (HHS).

ACTION: Notice.

SUMMARY: This notice sets forth the Secretary's proposal to require Hospital Preparedness Program (HPP) cooperative agreement recipients to contribute non-federal matching funds starting with the FY 2009 funding cycle and each year thereafter. The amount of the cost sharing requirement in FY 2009 will be five percent of the award amount and in FY 2010 and each year thereafter the amount of match will be ten percent of the award amount.

DATES: To be considered, comments on this notice must be submitted by June 16, 2008. Subject to consideration of the comments submitted, the Department intends to publish a final notice of any cost sharing requirement.

ADDRESSES: See Supplementary Information, Request for Comments section for addresses for submitting all comments concerning this proposal.

FOR FURTHER INFORMATION CONTACT: CDR Melissa Sanders, Team Leader, Healthcare Systems Preparedness Program, 202–245–0763

SUPPLEMENTARY INFORMATION: Authorized by section 319C–2 of the Public Health Service (PHS) Act, as amended by the Pandemic and All-Hazards Preparedness Act (PAHPA)

(Pub. L. 109–417), the HPP is a cooperative agreement program funded and administered by the Assistant Secretary for Preparedness and Response (ASPR). Its purpose is to improve surge capacity and enhance community and hospital preparedness for public health emergencies.

Currently there are 62 awardees comprised of the 50 States; the District of Columbia; the three metropolitan areas of New York City, Los Angeles County and Chicago; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the territories of American Samoa, Guam and the U.S. Virgin Islands; the Federated States of Micronesia; and the Republics of Palau and the Marshall Islands.

Since the inception of the program in 2002 awardees have received funding through a statutory formula that employs a base allocation with an adjustment for population. PAHPA amended section 319C–1 and 319C–2 of the PHS Act to add certain accountability provisions.

Consistent with those accountability provisions, this notice proposes to introduce a cost sharing requirement for the HPP program as a concrete way of solidifying collaboration between States and the Federal government in assuring this program will achieve enhanced sustainability in healthcare system preparedness during and after the project period has ended.

ASPR proposes that awardees will make available, either directly or through donations from public or private entities non-Federal contributions in an amount equal to five percent of the award amount in FY 2009 and ten percent of the award amount in FY 2010 and each successive year for the duration of the program. Non-Federal contributions would be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment or services. Amounts provided by the Federal government, or services assisted or subsidized to any significant extent by the Federal government, would not be included in determining the amount of such non-Federal contributions.

The cost sharing requirement would apply to the entire award amount received by the State from the U.S. Department of Health and Human Services through the HPP.

The cost sharing requirement would be implemented as a term and condition of the HPP award.

Request for Comments: The ASPR invites public comment on this notice to add a cost sharing requirement to the HPP. You may submit comments in one of three ways (please choose only one of the ways listed):

- *E-mail*: CDR Melissa Sanders, *melissa.sanders@hhs.gov.*
- *Mail*: CDR Melissa Sanders, Team Leader, Healthcare Systems Preparedness Programs, HSS/OS/ASPR, 395 E Street, SW., 10th Floor, Suite 1075, Washington, DC 20201
- *Hand Delivery/Courier*: CDR Melissa Sanders, Team Leader, Healthcare Systems Preparedness Programs, HSS/OS/ASPR, 395 E Street., SW., 10th Floor, Suite 1075, Washington, DC 20201

Dated: May 9, 2008.

RADM W. Craig Vanderwagon,

Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services.

[FR Doc. E8–10970 Filed 5–15–08; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Reporting and Accountability Changes to the Hospital Preparedness Program (HPP)

AGENCY: Department of Health and Human Services, Office of the Assistant Secretary for Preparedness and Response, ASPR (HHS).

ACTION: Notification of intent to fund and information on: (1) Maintenance of Funding (MOF); (2) Evidenced-Based Benchmarks and Objective Standards; (3) Reporting; (4) Funding Formula; (5) Withholding; and (6) Maximum Carryover Amount.

The final FY 2008 Funding Opportunity Announcement (FOA) for the Hospital Preparedness Program (HPP) will be available in the coming weeks at *http://www.grants.gov*.

SUMMARY: The Department of Health and Human Services (HHS or the Department) is issuing in the third quarter of FY 2008 a Funding Opportunity Announcement (FOA) for the HPP, authorized under section 319C–2 of the Public Health Service (PHS) Act, as amended by the Pandemic and All-Hazards Preparedness Act (PAHPA) (Pub. L. 109–417). The Consolidated Appropriations Act, 2008, provides funding for these awards (Pub. L. 110–161). This **Federal Register** notice provides information concerning critical aspects of this program including:

- Program Background;
- Program Requirements:
  - Maintenance of Funding;
  - Evidenced Based Benchmarks and Objective Standards;
  - Reporting;
  - Funding Formula;
  - Withholding;
  - Maximum Carryover Amount;
- Important Dates.

FOR FURTHER INFORMATION CONTACT: CDR Melissa Sanders at (202) 245–0763, or *melissa.sanders@hhs.gov*.

SUPPLEMENTARY INFORMATION:

Program Background

Building on the lessons learned from the attacks of September 11th, 2001, and Hurricanes Katrina and Rita, PAHPA was enacted in December 2006 to improve the Nation's public health and medical preparedness and response capabilities for emergencies, whether deliberate, accidental, or natural. PAHPA amended and added new sections to the PHS Act. Examples of these changes include: identifying the Secretary of Health and Human Services as the lead official for all Federal public health and medical responses to public health emergencies and other incidents covered by the National Response Framework; establishing the position of the Assistant Secretary for Preparedness and Response (ASPR), who will lead and coordinate HHS preparedness and response activities, advise the Secretary of HHS during an emergency, and lead the coordination of emergency preparedness and response efforts between HHS and other Federal agencies; consolidating Federal public health and medical response programs under the Assistant Secretary for Preparedness and Response (ASPR); requiring the development and implementation of the National Health Security Strategy; and reauthorizing the Public Health and Emergency Preparedness (PHEP) cooperative agreements administered by the CDC and the HPP grants administered by the ASPR. In addition to reauthorizing these two cooperative agreement programs, PAHPA amended these grant programs to add certain new requirements that awardees must meet. The purpose of this notice is to notify HPP awardees about critical aspects and requirements of the HPP as amended by PAHPA.

Purpose: The purpose of the Hospital Preparedness Program (HPP) is to provide funding to improve surge capacity and realize the following preparedness goals:

- Integration: Ensuring the integration of public and private medical capabilities with public health and other first responder systems, including—

1. Periodically evaluating preparedness and response capabilities through drills and exercises; and

2. Integrating public and private sector public health and medical donations and volunteers.

• Medical: Increasing the preparedness, response capabilities, and surge capacity of hospitals, other health care facilities (including mental health facilities), and trauma care and emergency medical service systems, with respect to public health emergencies. This shall include developing plans for the following:

1. Strengthening public health emergency medical management and treatment capabilities.
2. Improving medical evacuation and fatality management capabilities.
3. Rapidly distributing and administering medical countermeasures, specifically to hospital based health care workers and their family members or partnership entities.
4. Utilizing effectively any available public and private mobile medical assets and integration of other Federal assets.
5. Protecting health care workers and health care first responders from workplace exposures during a public health emergency.

• At-Risk Individuals: Preparing for the medical needs of at-risk individuals in their community in the event of a public health emergency. Medical needs include behavioral health consisting of both mental health and substance abuse considerations. The term ''at-risk individuals'' means children, pregnant women, senior citizens and other individuals who have special needs in the event of a public health emergency. Before, during and after an incident, members of at-risk populations may have additional needs in one or more of the following functional areas: maintaining independence, communications, transportation, supervision and medical care. In addition to those individuals specifically identified as at-risk in the above definition, individuals who may need additional response assistance should include those who:

1. Have disabilities;
2. Live in institutionalized settings;
3. Are from diverse cultures;
4. Have limited English proficiency or are non-English speaking;
5. Are transportation disadvantaged;
6. Have chronic medical disorders; and
7. Have pharmacologic dependency.

• Coordination: Minimizing duplication of, and ensuring coordination between, Federal, State, local, and tribal planning, preparedness, response and recovery activities (including the State Emergency Management Assistance Compact).

• Continuity of Operations: Maintaining vital public health and medical services to allow for optimal Federal, State, local, and tribal operations in the event of a public health emergency.

Eligibility: The following are eligible entities:

• A State;
• A political subdivision determined to be eligible for an award under section 319C–1 of the PHS Act; or
• A consortium of States.

Program Requirements

1. Maintenance of Funding (MOF)

Award recipients must maintain their health care preparedness expenditures at a level that is not less than the average of expenditures made during the preceding two year period (i.e., federal FY 2006 and FY 2007). The MOF requirement refers to the awardee's expenditures (i.e., state (or political subdivision) contributions for health care preparedness, not Federal dollars) and may include expenditures for surge capacity investments such as:

a. Beds;
b. Isolation;
c. Decontamination;
d. Personal Protective Equipment;
e. Pharmaceuticals;
f. Mobile Medical Assets;
g. Interoperable communications equipment;
h. Laboratory equipment and trainings.

2. Evidence-Based Benchmarks and Objective Standards

In accordance with section 319C–1(g) of the PHS Act, ASPR has established evidence-based benchmarks and targets to be achieved at the mid-year and end-of-year reporting times. Please see the FY08 HPP FOA for the specific benchmarks that awardees must achieve. As noted in more detail below, HPP awardees will have funds withheld from their FY 2009 awards if, when expending their FY 2008 HPP awards, they fail substantially to meet the benchmarks described in the FY 2008 HPP FOA.

3. Reporting

In order to ensure all awardees are able to demonstrate compliance with newly established benchmarks and other reporting requirements, HHS will require semi-annual reporting information. Please see the FY08 HPP FOA for actual reporting targets to be met.

4. Funding Formula

Per section 319C–2(j) of the PHS Act, funding for this mandatory cooperative agreement is determined in the same manner as amounts are determined for PHEP awardees under section 319C–1(i) of the PHS Act, via a statutory formula that employs a base allocation with an adjustment for population.

5. Withholding

The Secretary of HHS is required under section 319C–1(g) of the PHS Act to develop and require application of measurable benchmarks and objective standards that measure levels of preparedness with respect to HPP activities. The Secretary shall withhold funds beginning in FY 2009 from HPP awardees who fail substantially to meet the applicable benchmarks for the immediate preceding fiscal year and/or who fail to submit a Pandemic Influenza Plan. Thus, HPP awardees will have funds withheld from their FY 2009 awards if, when expending their FY 2008 HPP awards, they fail substantially to meet the benchmarks described in the FY 2008 FOA or to submit a Pandemic Influenza Plan. The amounts to be withheld are as follows:

(i) For the fiscal year immediately following a fiscal year in which an entity experienced a failure, an amount equal to 10 percent of the amount the entity was eligible to receive;

(ii) For the fiscal year immediately following two consecutive fiscal years in which an entity experienced a failure, an amount equal to 15 percent of the amount the entity was eligible to receive, taking into account the withholding of funds for the immediately preceding fiscal year;

(iii) For the fiscal year immediately following three consecutive fiscal years in which an entity experienced such a failure, an amount equal to 20 percent of the amount the entity was eligible to receive, taking into account the withholding of funds for the immediately preceding two fiscal years;

(iv) For the fiscal year immediately following four consecutive fiscal years in which an entity experienced such a failure, an amount equal to 25 percent of the amount the entity was eligible to receive, taking into account the withholding of funds for the three preceding fiscal years.

Each failure to meet the benchmarks for the immediately preceding fiscal year or to submit a Pandemic Influenza Plan will be treated as a separate failure for purposes of calculating amounts withheld. The Secretary is required to develop and implement a process to notify entities who have failed substantially to meet the evidence-based benchmarks or who have failed to submit a Pandemic Influenza Plan. HHS will notify awardees during the mid-

year reporting period that are determined to have failed to meet the benchmark targets that are described in the FOA. Awardees will have the opportunity to seek intensive technical assistance from project officers and be involved in the development of such technical assistance. Should awardees fail to correct their failures, they shall be subject to the withholding amounts described previously.

6. Maximum Carryover Amount

Per section 319C–1(j)(3) of the PHS Act the Secretary shall determine, for each fiscal year, the maximum percentage of unobligated funds that may be carried over to the succeeding fiscal year. If the percentage of unobligated funds exceeds the maximum percentage permitted, the awardee shall return that portion of the unobligated funds that exceeds the maximum amount permitted. Awardees may apply to the Secretary for a waiver of the maximum percentage amount by including an explanation why the requirement should not apply to the awardee and the steps the awardee will take to ensure that all funds will be expended appropriately. Further, the Secretary may waive or reduce the amount of carryover determined for a single entity or for all entities in a fiscal year, if the Secretary determines that mitigating conditions exist that justify the waiver or reduction.

An awardee may not have more than 15% of the award available as unobligated funds at the time a carryover request is made, approximately 10 months into the budget cycle. Amounts in excess of 15% may result in repayment.

7. Important Dates

Anticipated Application Due Date: June 11, 2008.

Anticipated Award Date: August 1, 2008

Dated: May 9, 2008.

RADM W. Craig Vanderwagon,

Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services.

ASPR Hospital Preparedness Program (HPP) Cooperative Agreement

Enforcement Actions and Disputes

I. Purpose

Sections 319C–1 and C–2 of the Public Health Service (PHS), as amended by the Pandemic and All-Hazards Preparedness Act (PAHPA), include certain accountability and compliance requirements that grantees must meet, including achievement of evidence-based benchmarks, audit requirements, and maximum carryover amounts. This document provides information about enforcement actions associated with these requirements, and appeal processes in the event there is a dispute. This document addresses requirements and enforcement actions specifically outlined in section 319C–1 and C–2 of the PHS. It is not intended to cover all requirements that grantees must meet pursuant to grant laws, regulations, Departmental grants policy, and terms and conditions of the award. Grant laws, regulations, and Departmental grants policies apply to these grants to the extent they are consistent with section 319C–1 and C–2 of the PHS Act.

II. Abbreviations, Acronyms and Definitions

A. For the purpose of this document, the following abbreviations and acronyms apply:

1. ARC—Agency Review Committee.
2. ASPR—Assistant Secretary for Preparedness and Response.
3. CGMO—Chief Grants Management Officer.
4. DAB—Departmental Appeals Board.
5. GMO—Grants Management Officer.
6. GMS—Grants Management Specialist.
7. HHS—Department of Health and Human Services.
8. HPP—Hospital Preparedness Program.
9. IDDA—Intra-Departmental Delegation of Authority (IDDA).
10. NoA—Notice of Award.
11. OPHS—Office of Public Health and Science.
12. PHEP—Public Health Emergency Preparedness.
13. PO—Project Officer.

B. For the purpose of this document, the following definitions apply:

1. HHS Department Appeals Board (DAB)—The administrative board responsible for resolving certain disputes arising under HHS assistance programs. The DAB provides an impartial adjudicatory hearing process for appealing certain final written decisions by GMOs. The DAB's jurisdiction is specified in 45 CFR Part 16, ''Procedures for HHS Grant Appeals Board.''
2. Agency Review Committee (ARC)—Committee comprised of awarding agency members who review awardee appeals to adverse determinations made by grant officials. A minimum of three appointed core members, one of whom will be designated a chairperson by the ASPR. Others may be designated as determined by the chairperson. Members of the ARC may not be from the branch or program whose adverse determination is being appealed.
3. Recipient—The organization that receives a grant or cooperative agreement award from an awarding agency, and is responsible and accountable for using the funds provided, and for the performance of the grant-supported project or activity. The recipient is the entire legal entity, even if a particular component is designated in the NoA. The term includes ''awardee/grantee.''
4. Corrective action—Action taken by the awardee that corrects identified deficiencies or produces recommended improvements.
5. Enforcement—Actions taken to compel the observance of policies, regulations, and laws governing the administration of an assistance program. Such actions are generally the result of a recipient's failure to comply with the terms and conditions of an award. These failures may cause an awarding agency to take one or more actions, depending on the severity and duration of the non-compliance. The awarding agency generally will afford the recipient an opportunity to correct the deficiencies before taking enforcement action, unless public health or welfare concerns require immediate action. However, even if an awardee is taking corrective action, the awarding agency may take proactive steps to protect the Federal government's interests, including placing special conditions on awards, or may take action designed to prevent future non-compliance, such as closer monitoring.
6. Termination—The permanent withdrawal by the awarding agency of an awardee's authority to obligate previously awarded grant funds before that authority would otherwise expire, including the voluntary relinquishment of that authority by the recipient.
7. Disallowance—A determination denying payment of an amount claimed under an award, or requiring return of funds or off-set of funds already received.
8. Void—A determination that an award is invalid because the award was not authorized by statute or regulation, or because it was fraudulently obtained.
9. Withholding of funds—An action taken by an awarding agency to withhold or reduce support within a previously approved or subsequent budget period. Withholding may occur for the following justifiable reasons: (1) An awardee is delinquent in submitting required reports; (2) adequate Federal funds are not available to support the project; (3) an awardee fails to show satisfactory progress in achieving the objectives of the project, e.g.,

performance measures/benchmarks and/or excessive carryover; (4) an awardee fails to meet the terms of a previous award; (5) an awardee's management practices fail to provide adequate stewardship of Federal funds; (6) any reason which would indicate that continued funding would not be in the best interests of the Government.

10. Offset—The withholding of funds from an award recipient in order to compensate for costs owed the awarding agency.

11. Repayment of funds—Funds for payment of a debt determined to be owed to the Federal Government. Repayment of funds cannot come from other Federally-sponsored programs.

12. Terms and conditions of award—All requirements imposed on a recipient by the Federal awarding agency, whether by statute, regulation, or within the grant award document itself. The terms of award may include both standard and special provisions, appearing on each NoA that are considered necessary to attain the objectives of the grant; facilitate post award administration of the grant, conserve grant funds, or otherwise protect the Federal government's interests.

13. Performance measures/benchmarks—The use of statistical evidence to determine progress toward specific defined objectives. These are leading indicators that will allow a national ''snapshot'' to show how preparedness and response activities, and the associated resources, aid in improving the public health system.

14. Excessive Carryover—Unobligated funds of a recipient that exceed the established maximum percentage of 15% of the award, as reported on a Financial Status Report (SF–269) at the time a carryover request is made, approximately 10 months into the 12 month budget cycle. The threshold amount includes direct and indirect costs.

15. Outlays or Expenditures—The charges made to the Federally-sponsored project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to sub-awardees. For reports prepared on an accrual basis, outlays are the sum of cash reimbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, sub-awardees and other payees and other amounts becoming owed under programs for which no current services or performance are required.

16. Audits—A systematic review or appraisal made to determine whether internal accounting and other control systems provide reasonable assurance of financial operations are properly conducted; financial reports are timely, fair, and accurate; the entity has complied with applicable laws, regulations, and terms and conditions of award; resources are managed and used economically and efficiently; desired results and objectives are being achieved effectively.

17. Failure—Noncompliance with any or all of the provisions of the NoA which include but not limited to various laws, regulations, assurances, terms, or conditions applicable to the grant or cooperative agreement.

18. Matching or Cost Sharing—The value of third-party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government. Costs used to satisfy matching or cost-sharing requirements are subject to the same policies governing allowability as other costs under the approved budget.

III. Background

PAHPA amended section 319C–2 of the PHS Act, and authorizes the Assistant Secretary for Preparedness and Response (ASPR) to award cooperative agreements to eligible entities to enable such entities to improve surge capacity and enhance community and hospital preparedness for public health emergencies. Funding for these awards is provided by the Consolidated Appropriations Act of 2008 (Public Law 110–161).

Grantees must meet certain statutory accountability and compliance requirements. Sections 319C–1 and C–2 of the PHS Act require the Department to take certain enforcement actions if grantees fail to meet these requirements. More specifically, this document addresses the following enforcement actions required by the statute: (1) Beginning in fiscal year 2009, withholding a statutorily-mandated percentage of the award if an awardee fails substantially to meet established benchmarks and performance measures for the immediately preceeding fiscal year or fails to submit a satisfactory pandemic flu plan to the Department; (2) repayment of any funds that exceed the maximum percentage of an award that an entity may carryover to the succeeding fiscal year; and (3) repayment or future withholding or offset as a result of a disallowance decision if an audit shows that funds have not been spent in accordance with section 319C–2 of the PHS Act .

IV. Enforcement Actions and Disputes

A. Withholding for Failure To Meet Established Benchmarks and Performance Measures or To Submit a Satisfactory Pandemic Influenza Plan

1. Beginning with the distribution of FY 2009 funding, awardees that fail substantially to meet performance measures/benchmarks for the immediately preceding fiscal year and/or who fail to submit a pandemic influenza plan to CDC as part of their application for PHEP funds, may have funds withheld from their FY 2009 and subsequent award amounts. An awardee that fails to correct such noncompliance shall be subject to withholding in the following amounts:

- For the fiscal year immediately following a fiscal year in which the awardee has failed substantially to meet performance measures/benchmarks or who has failed to submit a satisfactory pandemic influenza plan; an amount equal to 10 percent of funding the awardee was eligible to receive.
- For the fiscal year immediately following two consecutive fiscal years in which an awardee experienced such a failure, an amount equal to 15 percent of funding the awardee was eligible to receive, taking into account the withholding of funds for the immediately preceding fiscal year.
- For the fiscal year immediately following three consecutive fiscal years in which an awardee experienced such a failure, an amount equal to 20 percent of funding the awardee was eligible to receive, taking into account the withholding of funds for the immediately preceding fiscal years.
- For the fiscal year immediately following four consecutive fiscal years in which an entity experienced such a failure, an amount equal to 25 percent of funding the awardee was eligible to receive for such a fiscal year, taking into account the withholding of funds for the immediately preceding fiscal year.

Please note that HHS is required to treat each failure to substantially meet all the benchmarks and each failure to submit a satisfactory pandemic influenza plan as a separate withholding action. For example, an awardee failing substantially to meet benchmarks/performance measures and who fails to

submit a satisfactory pandemic influenza plan could have 10% withheld for each failure for a total of 20% for the first year this happens. If this situation remained unchanged, HHS would then be required to assess 15% for each failure for a total of 30% for the second year this happens. Alternatively, if one of the two failures are corrected in the second year but one remained, HHS is required to withhold 15% of the second year funding.

2. Technical Assistance and Notification of Failures

ASPR may, in coordination with the CGMO and in accordance with established Departmental grants policy, provide to an awardee, upon request, technical assistance in meeting benchmarks/performance measures and submitting a satisfactory pandemic influenza plan. In addition, as described below, ASPR will notify awardees that are determined to have failed substantially to meet benchmarks/performance measures and/or who have failed to submit a satisfactory pandemic influenza plan and give them an opportunity to correct such noncompliance. Entities who fail to correct such noncompliance will be subject to withholding as described in the paragraph above.

The awardee shall submit the required progress report on or before the specified due date according to the terms and conditions of the NoA. The Project Officer shall, within 15 days of receipt of the required progress report, assess performance, provide technical assistance to the awardee as required, and issue a written letter acknowledging completion of assessment and that the assessment has been forwarded to the GMO. Upon determination that the awardee has failed to comply with the terms and conditions of a grant or cooperative agreement, the Project Officer (PO) shall issue a written recommendation and provide a complete documentation package to the Grants Management Officer (GMO) based on the review and monitoring of the awardee.

Within 15 days of receipt of the recommendation from the PO, the GMO shall issue an initial failure notification to the awardee in writing. This document will provide compliance requirements as submitted by the PO and will include the total amount of Federal funds which will be withheld or reduced in the subsequent fiscal year due to noncompliance, absent corrective action by the awardee that is satisfactory to the GMO. The document will specify that the GMO will take such other remedies as may be legally available and appropriate in the circumstances, such as withholding of Federal funds.

The awardee must provide a proposed Corrective Action Plan (CAP) in writing to the GMO, within 15 days of receipt of the initial failure notification.. The GMO will forward a copy to the PO. The awardee may request technical assistance at this time.

Within 15 days of receipt of the proposed CAP, the PO will assess the remedies and provide a recommendation to the GMO. If the GMO finds the corrective action measures satisfactory, the GMO shall, within 15 days of receipt of the PO's assessment, provide notification to the awardee of the awarding agency's intent to rescind the initial failure notification. If in the GMO's judgment the awardee has still failed to comply with the terms and conditions of a grant or cooperative agreement, the GMO shall issue a final failure notification and provide information about the appeal process to include applicable timelines in writing. The GMO will concurrently issue his/her decision to the awardee and the Agency Review Committee (ARC).

3. Dispute Process

The ASPR has established an ARC for the purpose of providing awardees a fair and flexible process to appeal certain enforcement actions such as a final decision to withhold funds due to a failure to meet benchmarks/performance measures and/or to submit a satisfactory pandemic influenza plan. The ARC consists of three regular members: ASPR Principal Deputy (Director); OPEO (Director); and Resource Planning and Evaluation (Director). The ASPR Principal Deputy, Director, or designee, shall be the chairperson for the ARC. The ARC may consult with subject matter experts within the Department as necessary (i.e., attorneys, Branch Chiefs, Team Leaders, Project Officer/Public Health Advisors, etc.) Members of the ARC may not be from the branch or program whose adverse determination is being appealed.

If the awardee chooses to appeal the GMO decision, the awardee must do so directly to the ARC within ten days of receipt of the GMO's final failure notification. The Notice of Appeal shall include: (1) a detailed description of the reason for appeal including supporting documentation and (2) a description of how the enforcement action impacts the affected organization. The awardee should be aware that they bear the burden of proof to the extent of the type of modification or reversal of the GMO's decision they seek and the necessity for modification or reversal.

Within ten days of receipt of the awardee's notice of appeal, the GMO will (1) Brief the ARC on the issues of the case, (2) submit any relevant documentation supporting the decision, and (3) provide a written statement responding to the notice of appeal.

Within ten days of receipt of the brief and documentation submitted by the GMO, the ARC will acknowledge, in writing, the notice of appeal to the awardee and the GMO. The ARC will review the relevant information, within seven days of providing written notification to awardee and GMO, and use one or a combination of the following methods for dispute resolution:

(a) Documentation Review—an independent evaluation of documents to verify compliance with laws, regulations, or policies;

(b) Conference—allow parties an opportunity to make an oral presentation to clarify issues, question both parties to obtain a clear understanding of the facts, and provide recommendations for resolution. Telephone conferences are acceptable.

Based on the outcome of the review or conference, the ARC will decide on the resolution of an issue within seven days. The ARC may decide that the Department should waive or reduce the withholding as described above for a single entity or for all entities in a fiscal year, if the ARC reviews and determines that mitigating conditions exist that justify the waiver or reduction. The ARC will notify the GMO, PO, and the awardee, in writing, of their final decision that the Department should waive or withhold federal funds.

If the ARC's final decision is to for the Department to waive the federal funds to be withheld or withhold Federal funds for the subsequent fiscal year, the GMO shall issue, in writing, a final decision to the awardee within ten days from the receipt of the ARC's final decision.

Funds that are withheld for failure to substantially meet benchmarks/performance measures and/or to submit a satisfactory pandemic influenza plan will be reallocated so that the Secretary may make awards under section 319C–2 to entities described in subsection (b)(1) of that section (i.e., Healthcare Facility Partnership grants).

4. Responsibilities

A. PO/Public Health Advisor shall:

1. During the corrective action phase, provide technical assistance to the awardee to meet the requirement.

2. If determined the awardee will not meet the requirement, the PO shall issue a written recommendation to the GMO

based on the review and monitoring of awardee progress.

3. Provide a timely documentation package to the GMO regarding a decision to withhold or reduce cooperative agreement funds.

B. GMO shall:

1. Rescind initial failure notification or issue a final failure notification and provide the awarding agency's process for appeal to include applicable timelines, in writing, to the awardee and provide a copy to ARC.

2. Brief ARC on issues pertaining to disputes.

3. Prepare and submit a complete documentation package to the ARC regarding a decision to withhold or reduce cooperative agreement funds.

C. ARC shall:

1. Establish regular committee members and consult with subject matter experts in the Department as necessary.

2. Receive initial Notice of Appeal.

3. Send acknowledgements to the awardee and GMO.

4. Review disputes by documentation or conference.

5. Provide recommendations and facilitate disputes to preclude further action.

6. Provide the ARC decisions on appeals.

D. Awardee or Complainant shall:

1. Remedy non-compliance issues during the corrective action phase. If the GMO determines that corrective actions have not been adequate, the awardee may submit a written request for review.

2. If awardee disputes the GMO's final decision, submit dispute to ARC after Failure Notification is received from the agency awarding office. The dispute must contain the following:

A. A detailed description of the reason for dispute including supporting documentation and

B. A description of how the enforcement action impacts the affected organization.

B. Repayment of Any Funds That Exceed the Maximum Percentage of an Award That an Entity May Carry Over to the Succeeding Fiscal Year

1. For each fiscal year, ASPR, in consultation with the States and political subdivisions, will determine the maximum percentage amount of an award that an awardee may carry over to the succeeding fiscal year. This percentage amount will be listed in the funding opportunity announcement (FOA). For fiscal year 2008 awards, this maximum percentage amount that an awardee may carry over is 15%. For each fiscal year, if the percentage amount of an award unobligated by an awardee exceeds the maximum percentage permitted (i.e., 15% for FY 2008 awards), the awardee shall repay the portion of the unobligated amount that exceeds the maximum amount permitted to be carried over to the succeeding fiscal year.

2. Notification of Failure

Upon determination that the awardee has exceeded the maximum percentage permitted, the GMO shall issue an initial failure notification to the awardee in writing. Such documentation will specify that the GMO will take such remedies as may be legally available and appropriate in the circumstances, such as requiring repayment of the portion of the unobligated amount that exceeds the maximum amount permitted to be carried over to the succeeding fiscal year.

The awardee must provide a proposed Corrective Action Plan (CAP) in writing to the GMO, within 15 days of receipt of the initial failure notification.. The GMO will provide a copy to the PO. The awardee may request technical assistance at this time.

Within 15 days of receipt of the proposed CAP, the PO will assess the remedies and provide a recommendation to the GMO. The GMO shall, within 15 days of receipt of the PO's assessment, provide notification to the awardee of the awarding agency's intent to rescind the initial failure notification. If the awardee has still failed to comply with the terms and conditions of a grant or cooperative agreement, the GMO shall issue a final failure notification in writing and provide information about the appeal process and application for waiver of repayment to include applicable timelines. The GMO will concurrently issue his/her decision to the awardee and the Agency Review Committee (ARC).

3. Dispute Process

If the awardee chooses to appeal the GMO decision, the awardee must do so directly to the ARC within ten days of receipt of the GMO's final failure notification. The Notice of Appeal shall include: (1) A detailed description of the reason for appeal including supporting documentation; (2) a description of how the enforcement action impacts the affected organization; and (3) request for a waiver of repayment that includes an explanation why such requirement (for maximum percentage of carryover amount) should not apply to the awardee and the steps taken by the awardee to ensure that all HPP funds will be expended appropriately. The awardee should be aware that they bear the burden of proof to the extent of the type of modification or reversal of the GMO's decision they seek and the modification or reversal.

Within ten days of receipt of the awardee's notice of appeal, the GMO will (1) Brief the ARC on the issues of the case, (2) submit any relevant documentation supporting the decision, and (3) provide a written statement responding to the notice of appeal.

Within ten days of receipt of the brief and documentation submitted by the GMO, the ARC will acknowledge, in writing, the notice of appeal to the awardee and the GMO.

The ARC will review the relevant information, within seven days, and use one or a combination of the following methods for dispute resolution:

(a) Documentation Review—an independent evaluation of documents to verify compliance with laws, regulations, or policies;

(b) Conference—allow parties an opportunity to make an oral presentation to clarify issues, question both parties to obtain a clear understanding of the facts, and provide recommendations for resolution. Telephone conferences are acceptable.

The ARC may decide that the Department should waive or reduce the amount to be repaid for a single entity or for all entities in a fiscal year, if the ARC reviews and determines that mitigating conditions exist that justify the waiver or reduction. The ARC will notify the GMO, PO, and the awardee, in writing, of their final decision that the Department should waive or require repayment of the portion of the unobligated amount of HPP funds that exceeds the maximum amount permitted to be carried over to the succeeding fiscal year.

If the ARC's final decision is to waive or to require repayment of the portion of the unobligated amount of HPP funds that exceeds the maximum amount permitted to be carried over to the succeeding fiscal year, the GMO shall issue a final decision in writing to the awardee within ten days from the receipt of the ARC's final decision.

Funds that are repaid to ASPR will be reallocated so that the Secretary may make awards under section 319C–2 to entities described in subsection (b)(1) of that section (i.e., Healthcare Facility Partnership grants).

4. Responsibilities

A. PO/Public Health Advisor shall:

1. If determined the awardee has exceeded the maximum carryover percentage, the PO shall issue a written recommendation to the GMO based on

the review and monitoring of awardee progress.

2. Provide a timely documentation package to the GMO regarding a decision to repay unobligated HPP funds that exceed the maximum carryover percentage.

B. GMO shall:

1. Rescind initial failure notification or issue a final failure notification and provide the awarding agency's process for appeal to include applicable timelines, in writing, to the awardee and provide a copy to ARC.

2. Brief ARC on issues pertaining to disputes.

3. Prepare and submit a complete documentation package to the ARC regarding a decision to repay.

C. ARC shall:

1. Establish regular committee members and consult with subject matter experts in the Department, as necessary.

2. Receive initial Notice of Appeals.

3. Send acknowledgements to the awardee and GMO.

4. Review disputes by documentation or conference.

5. Provide recommendations and facilitate disputes to preclude further action.

6. Provide the ARC decisions on appeals.

D. Awardee or Complainant shall:

1. Remedy non-compliance issues during the corrective action phase. If the GMO determines that corrective actions have not been adequate, the awardee may submit a written request for review.

2. If awardee disputes the GMO's final decisions, submit dispute to ARC after Failure Notification is received from the agency awarding office as described in the NoA. The dispute must contain the following:

A. A detailed description of the reason for dispute including supporting documentation;

B. A description of how the enforcement action impacts the affected organization; and

C. Request for a waiver of repayment that includes an explanation why such requirement (for maximum percentage of carryover amount) should not apply to the awardee and the steps taken by the awardee to ensure that all HPP funds will be expended appropriately.

C. Repayment or Future Withholding or Offset as a Result of a Disallowance Decision if an Audit Shows That Funds Have Not Been Spent in Accordance With Section 319C–2 of the PHS Act

1. Awardees shall, not less often than once every 2 years, audit their expenditures from HPP funds received. Such audits shall be conducted by an entity independent of the agency administering the HPP program in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following completion of each audit report, awardees should submit a copy of that audit report to ASPR.

Awardees shall repay to the United States amounts found not to have been expended in accordance with section 319C–2 of the PHS Act. If such repayment is not made, ASPR may offset such amounts against the amount of any allotment to which the awardee is or may become entitled under section 319C–2 or may otherwise recover such amount. ASPR may withhold payment of funds to any awardee which is not using its allotment under section 319C–2 in accordance with such section. ASPR may withhold such funds until it finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

2. Disallowance notification

Upon determination as a result of audit findings that the awardee has not expended funds in accordance with section 319C–2, the GMO shall issue a disallowance notification to the awardee for the portion of funds not expended in accordance with section 319C–2 and require repayment of those funds to the United States.

3. Dispute process

HHS has established a DAB for the purpose of providing awardees a fair and flexible process to appeal certain written final decisions involving grant and cooperative agreement programs administered by agencies of HHS. This document notifies HPP awardees that an opportunity exists to appeal a disallowance enforcement action to the DAB. If the awardee chooses to appeal a final disallowance decision by the GMO, the awardee must do so directly to the DAB within thirty days of receipt of the GMO's final disallowance notification. The Notice of Appeal shall include: (1) A copy of the final decision, (2) a statement of the amount in dispute in the appeal, and (3) a brief statement of why the decision is wrong. More details about the DAB's procedures may be found at 45 CFR part 16.

V. References

A. Code of Federal Regulations (CFR)

- 45 CFR Part 16 and Appendix A, Procedures of the Departmental Grants Appeal Board.
- 45 CFR Part 74 and Appendix E, Uniform Administrative Requirements for Awards and Sub-awards to Institutions of Higher Education, Hospitals, Other Nonprofit organizations, and commercial organizations.
- 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments.

B. OMB Circulars

- A–87, Cost Principles for State, Local and Indian Tribal Governments.
- A–102, Grants and Cooperative Agreements with State and Local Governments.
- A–110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
- A–133, Audits of States, Local Governments, and Non-Profit Organizations Requirements.

C. HHS Grants Policy Statement, January 1, 2007

[FR Doc. E8–11015 Filed 5–15–08; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–08–08BD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Survey of HIV Testing in Hospitals—New—National Center for HIV, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Early identification of HIV infection has significant benefits to the infected individual and society. In light of recent advancements in HIV testing and treatment, the Centers for Disease Control and Prevention (CDC) released its prevention initiative, Advancing HIV Prevention: New Strategies for a Changing Epidemic. A key component of this strategy focuses upon increased HIV testing in healthcare settings to increase the number of persons with HIV who are aware of their infection and are successfully referred to treatment and prevention services. In September 2006, CDC released revised recommendations for routine HIV testing of adults, adolescents, and pregnant women in healthcare settings as a measure to address the high number of individuals who are unaware of their HIV infection.

Routine HIV testing programs in hospital settings, including emergency departments (EDs) and urgent care centers (UCCs), have great potential to identify a large number of previously undiagnosed individuals. Prior to the release of the revised recommendations, few such hospital-based testing programs had existed in the United States. CDC is committed to increasing the number of such programs in the U.S., and is currently working with partners to achieve these goals. This project proposes a survey to assess HIV testing policies and practices in hospitals nationwide and to describe the up-take of the revised HIV testing recommendations for hospital settings.

The objectives of this project are: (1) To determine the extent to which HIV testing is being conducted in U.S. hospitals; (2) to describe the characteristics of hospitals with and without HIV testing programs; and (3) to identify barriers to and facilitators of implementing HIV testing programs in these settings. This data will assist CDC in monitoring the uptake of recommendations for HIV testing in healthcare settings.

CDC is requesting approval for a 2-year clearance for data collection. This project will collect data from hospitals on a one-time voluntary basis using a brief survey. Surveys will be completed by the hospital administrators at each site who are most knowledgeable on HIV testing practices, infection control, and laboratory procedures for their site, in consultation with other hospital staff, as necessary. Collection of data will provide information on current HIV testing practices and policies for the hospital; use of point-of-care and conventional HIV tests; and barriers and facilitators of hospital-based HIV testing.

Data will be requested from a representative sample of 4,927 U.S. community hospitals. Surveys will be sent to approximately 1,000 hospital sites with an estimated 70% response rate, based upon estimates from response rates from prior similar surveys among U.S. hospitals. This will result in approximately 700 participating hospital sites, representing approximately 15% of U.S. community hospitals. The average duration of the survey, including time required to collect the requested data, is estimated to be 4 hours per hospital site. There is no cost to the participating hospitals other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of form	Number of respondents	Number of responses per respondent	Average burden per response in hours	Total burden in hours
Hospital Survey	700	1	4	2,800
Total				2,800

Dated: May 8, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–10935 Filed 5–15–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis

Times and Dates:

8:30 a.m.–5 p.m., June 17, 2008.

8:30 a.m.–2 p.m., June 18, 2008.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, telephone (404) 639–8317.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters to be Discussed: Agenda items include issues pertaining to the Findings from the Philippine Technical Instruction Program Review; Division of Tuberculosis Training, Informatics, Surveillance and Research Issues; and Discussion on the Office of Management and Budget (OMB) and Genomics, and other related Tuberculosis Issues.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Coordinating Center for Infectious Diseases, Strategic Business Unit, 1600 Clifton Road, NE., M/S E–07, Atlanta, Georgia 30333, telephone (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for

both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–10993 Filed 5–15–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Preparedness and Emergency Response Research Centers: A Public Health System Approach, Program Announcement Number (PA) TP 08–001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Times and Dates:

7 p.m.–9:30 p.m., July 7, 2008 (Closed).

8:30 a.m.–5:30 p.m., July 8, 2008 (Closed).

8:30 a.m.–5:30 p.m., July 9, 2008 (Closed).

7 p.m.–9:30 p.m., July 9, 2008 (Closed).

8:30 a.m.–5:30 p.m., July 10, 2008 (Closed).

8:30 a.m.–5:30 p.m., July 11, 2008 (Closed).

Place: Spring Hill Suites Marriott, 3459 Buckhead Loop, Atlanta, GA 30326, Telephone (404) 844–4800.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to ''Preparedness and Emergency Response Research Centers: A Public Health System Approach,'' PA TP 08–001.

Contact Person for More Information: Charles Rafferty, Ph.D., Senior Scientific Review Officer, Office of Science and Public Health Practice, Coordinating Office for Terrorism Preparedness and Emergency Response, CDC, 1600 Clifton Road NE., Mailstop D44, Atlanta, GA 30333, Telephone (404) 639–7495.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–10974 Filed 5–15–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting for the aforementioned committee:

Name: Healthcare Infection Control Practices Advisory Committee (HICPAC).

Times and Dates:

9 a.m.–5 p.m., June 12, 2008.

9 a.m.–1 p.m., June 13, 2008.

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, Global Communications Center, Building 19, Auditorium B3, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), regarding (1) the practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (e.g., nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters to be Discussed: Guidelines and progress including prevention of UTI and Norovirus transmission, HICPAC prioritization of recommendations for implementation. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Wendy Vance, HICPAC, Division of Healthcare Quality Promotion, NCPDCID, CDC, l600 Clifton Road, NE., Mailstop D–10, Atlanta, Georgia 30333. Telephone (404) 639–2891.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–10991 Filed 5–15–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 73 FR 20297–304, dated April 15, 2008) is amended to reflect the reorganization of the Financial Management Office within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in their entirety the titles and functional statements for the Financial Management Office (CAJE), and insert the following:

Financial Management Office (CAJE). (1) Provides leadership and coordination in the development and administration of the Centers for Disease Control and Prevention's (CDC) financial management policies; (2) develops budget submissions for the CDC; (3) collaborates with the CDC Office of the Director (OD) in the development and implementation of long-range program and financial plans; (4) participates in budget reviews and hearings; (5) manages CDC's system of internal budgetary planning and control of funds; (6) develops and implements CDC-wide budgetary, accounting, and fiscal systems and procedures; (7) conducts CDC-wide manpower management (including productivity measurement) activities; (8) prepares financial reports; (9) serves as the focal point for domestic and international travel policy, procedures and interpretation; (10) provides legislation reference services; (11) plans, directs and conducts internal quality assurance reviews; (12) analyzes data and makes recommendations to assure effective safeguards are in place to prevent fraud, waste and abuse; (13) assists in identifying or conducting special

financial management training programs; and (14) maintains liaison with the Department of Health and Human Services (DHHS), Office of Management and Budget (0MB), Congress, and other government organizations on financial management matters.

Office of the Director (CAJE1). (1) Provides leadership, guidance, direction, and oversight necessary to fully manage the performance of CDC's Financial Management Office (FMO); (2) establishes FMO's vision and long-term strategy; (3) leads the overall budgetary and human resource management strategy for FMO; (4) develops customer service strategy and actively engages the Agency around financial management effectiveness and improvement; (5) provides financial guidance and strategic support for the Agency and the Chief Operating Officer; (6) advocates and supports policy and appropriations law compliance; (7) serves as CDC witness in budget hearings before Committees of Congress, OMB, and DHHS; (8) participates with senior program and Agency management in program planning and policy determinations, evaluations, conferences, and decisions concerning financial resources; (9) provides a centralized source for current information on financial management legal and regulatory requirements governing the prevention and control of diseases; and (10) provides consultation and assistance in financial management to state and local health departments when requested by CDC officials.

Travel Management Activity (CAJE12). (1) Provides expertise, guidance, oversight, and interpretation of policies, laws, rules and regulations for all aspects of travel procedures and policies at CDC, including the use of the automated travel system, local travel, domestic and foreign temporary duty travel, and change of station travel for civil service employees, foreign service employees, commissioned officers, CDC fellows, etc.; (2) communicates and implements Departmental travel policies; (3) manages the administrative aspects of travel for the agency, including enforcement of travel card policy, delegation of authority, distribution of cash purchase memos, and approval of First-Class memos; (4) serves as liaison with travel provider for travel contract matters; (5) provides the Director's Emergency Operations Center travel support; and (6) develops CDC Conference Travel planning and reporting for DHHS and Congress.

Office of Organizational Excellence (CAJE13). (1) Provides direction, strategy, and advice necessary to support the management and continuous improvement of FMO and financial processes; (2) coordinates creation and implementation of operating standards/procedures and processes, and monitors compliance; (3) provides leading practices in government financial management practices to FMO; (4) coordinates continuous improvement and special project initiatives and advises on performance improvement opportunities; (5) manages FMO Service Desk; (6) develops, implements, and manages recruiting, hiring, retention, and succession strategies; (7) manages all aspects of human resources for FMO, including application of Federal programs and staffing administration; (8) develops, implements, and manages professional development strategy and plan for FMO; (9) develops and implements FMO's communication strategy and plan; and (10) manages the development and communication of financial management policies.

Office of Formulation, Evaluation, and Analysis (CAJE14). (1) Develops CDC's budget in accordance with DHHS, OMB, and Congressional requirements, policies, procedures, and regulations; (2) provides leadership and advice on matters of budget formulation, public health policy development, budget and performance integration, and Congressional appropriations for CDC/ATSDR; (3) participates in budget reviews and hearings before DHHS, OMB, and Congress; (4) provides direction and guidance for appropriations strategy and program support; (5) manages budget submissions and OMB Performance Assessment and Rating Tool (PART) content; (6) provides leadership and advice in implementing performance systems, including the PART assessments, key performance indicators, and CDC's Government Performance Results Act (GPRA) program; (7) serves as a liaison with the Office of the Secretary, OMB, Government Accountability Office, other government organizations, and Congress on financial management matters; (8) manages appropriations analysis and reporting process, submissions, and summary information; and (9) manages appropriations communication and issues management both internally and externally, and interacts with BBS, OMB, Congress, and partners.

Accounting Branch (CAJEB). (1) Oversees and provides approach to accounting for the Agency; (2) manages accounting treatment for CDC on all business systems implementations and upgrades to current business systems; (3) manages all financial audit reviews for FMO and conducts risk assessment on internal controls; (4) prepares SF 133 Report on Budget Execution for CDC Appropriation and IDDAs, FACTS I and II Report and Year-End Closing Statement (2108 Report), and SF 224; (5) prepares, analyzes fluctuations, and coordinates explanation on differences for financial statements and notes, including Statement of Changes in Net Position, Statement of Budgetary Resources, Balance Sheet, Statement of Net Cost, and Statement of Financing; (6) performs GPRA reporting analysis for compliance; (7) ensures compliance of Federal and Department reporting requirements; (8) coordinates accounting policy issues with the DHHS Office of Financial Policy and FMO's Office of Organization Excellence; (9) manages Fund Balance with Treasury, including authority, disbursements (payroll and non-payroll), collections, deposit funds and budget clearing accounts; (10) prepares manual and ADI journal vouchers for corrections to the general ledger; and (11) performs monthly, quarterly, and year-end closeout process of the general ledger.

Financial Systems Branch (CAJED). (1) Provides management and coordination necessary for FMO to have access to systems, data, and reporting capability; (2) develops, implements, and manages long-term systems strategy for FMO; (3) provides systems analysis, design, programming, implementation, enhancement and documentation of FMO related systems; (4) provides technical support and assistance for data error analysis and resolution, coordination of system initiatives, management of IT resources, and the access and interpretation of financial system data; (5) serves as a liaison to UFMS Operations and Maintenance and other internal and external groups as needed; (6) manages all aspects of FMO's systems security and administration; (7) performs certification and accreditation of FMO systems; (8) performs CAN realignment coordination; and (9) manages FMO hardware and equipment, and serves as the custodial officer.

Financial Services Branch (CAJEE). (1) Manages all activities, policies, quality control, and audit support for accounts payable and disbursement functions for the Agency; (2) serves as the CDC subject matter expert on all financial matters dealing with all travel, assignments and payments; (3) ensures all payments are made in accordance with applicable Federal and international laws and standards, such as Appropriations Law; (4) serves as liaison with the Department of Treasury

(DOT), the CC/COs, NCs, Divisions, and/or Offices, as well as outside customers, to provide financial information and reconcile payment issues; (5) compiles and submits a variety of cash management and travel reports required by the DOT and various other outside agencies; (6) provides training and advice on payment, travel and disbursement issues; (7) manages the transactions related to accounts payable, such as processing cables, reimbursements, IPAC disbursements, and payments for Foreign internationals and Visiting Fellows; (8) completes all reconciliations of sub-legers to General Ledger; (9) responds to traveler inquiries for vouchers and certifies funds availability; and (10) manages change of station payment processing.

Budget Operations Branch (CAJEH). (1) Provides agency-level budget execution functions, financial data analysis, and reporting; (2) provides budgetary information for business decision making support surrounding public health; (3) develops high-level plans to execute Agency level budget; (4) ensures changes and plans are in compliance with decisions and Agency direction; (5) reports compliance of laws, regulations, and decisions to FMO Deputy Director for Budget; (6) provides agency-wide budget planning, analysis, and reporting for agency budget execution and public health goals strategy; (7) provides Agency spend plan validation, remediation, and analysis; (8) provides funds control management for the Agency level budget; (9) assists in the review of Congressional bill language to identify and properly account for earmarks and other directed programs; (10) provides Departmental and OMB reporting; and (11) provides budget execution for Centralized Mandatory Services.

Debt Management Branch (CAJEJ). (1) Oversees and provides approach to invoicing, billing, collections, reconciliations and reporting for the Agency; (2) serves as the central point of contact for the Agency on all debt management issues, including training and issue resolution; (3) develops strategy and analysis for reimbursable agreements in accordance with the CC/CO, NC, Division, and/or Office; (4) manages all aspects of accounts receivable transactions in UFMS, prepares invoices, and processes billing; (5) works with programs, the Chief Financial Officer, and FMO to resolve all posting errors, such as the resolution for over-obligated and unsigned agreements, DC calculations, and uncollectible debt; (6) analyzes the intra- and inter-governmental eliminations process for compliance with financial statements; (7) prepares and submits Agency level fmancial reports to HHS/OS; and (8) prepares and submits the year end certification and verification of the Treasury Report on receivables.

Grants and Asset Management Branch (CAJEK). (1) Oversees and provides approach to grants management; (2) serves as liaison with the Procurements and Grants Office, Buildings and Facilities Offices, Program offices, and Budget Execution Services on capital asset procedures; (3) manages financial accounting for all assets for CDC, including real and personal property, equipment, land, leases, software, personal property, and stockpiles; (4) conducts financial and inventory reconciliations for all applicable assets, including inventory such as Vaccine for Children and Strategic National Stockpile, real and personal property, equipment, leases, leasehold improvements, land, and others as needed; (5) provides training and assistance to CDC project officers and grants management officials around financial grants management; (6) serves as liaison with grantees and other operating divisions for financial questions/inquiries related to grants; (7) manages the process to perform grant processing for commitments, obligations, advances, disbursements, and accruals; (8) manages grants transactions, such as vendor set-up, establishing sub-accounts, CAN set-up within PMS, reconciling sycnfile to PMS, and posting files from PMS; and (9) conducts grant reviews, monitors burn rates, and supports Program in grant execution.

Budget Execution Services Branch 1 (CAJEL). This branch supports the National Center for Zoonotic, Vector-Borne, and Enteric Diseases and the National Center for Preparedness, Detection, and Control of Infectious Diseases by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the Coordinating Centers/Coordinating Offices (CC/CO), National Centers (NC), Divisions, and Offices; (4) manages and supports Program in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise Program on future spending decisions; (7) assists Program Officials in developing sub-allocation of CC/CO, NC, and Division ceilings; (8) communicates and shares knowledge with Program, FMO Central, and CDC's FMO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future year budget.

Budget Execution Services Branch 2 (CAJEM). This branch supports the National Center for Immunization and Respiratory Diseases, the National Center for HP//AIDS, Viral Hepatitis, STD, and TB Prevention, and the Office of the Director for Coordinating Center for Infectious Diseases by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the CC/COs, NCs, Divisions, and Offices; (4) manages and supports Program in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise Program on future spending decisions; (7) assists Program Officials in developing sub-allocation of CCICO, NC, and Division ceilings; (8) communicates and shares knowledge with Program, FMO Central, and CDC's FMO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Budget Execution Services Branch 3 (CAJEN). This branch supports the Coordinating Center for Environmental Health and Injury Prevention and the National Institute for Occupational Safety and Health by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the CC/COs, NCs, Divisions, and Offices; (4) manages and supports Program in all aspects of funds management; (5) provides the

leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise Program on future spending decisions; (7) assists Program Officials in developing sub-allocation of CC/CO, NC, and Division ceilings; (8) communicates and shares knowledge with Program, FMO Central, and CDC's FMO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Budget Execution Services Branch 4 (CAJEP). This branch supports the Coordinating Center for Health Promotion and the Office of Workforce and Career Development by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the CC/COs, NCs, Divisions, and Offices; (4) manages and supports Program in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise Program on future spending decisions; (7) assists Program Officials in developing sub-allocation of CC/CO, NC, and Division ceilings; (8) communicates and shares knowledge with Program, FMO Central, and CDC's FMO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Budget Execution Services Branch 5 (CAJER). This branch supports the Coordinating Office for Global Health, the Office of the Chief Operating Officers, and the Office of the Director, CDC, by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DUBS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the CC/COs, NCs, Divisions, and Offices; (4) manages and supports Program in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise Program on future spending decisions; (7) assists Program Officials in developing sub-allocation of CC/CO, NC, and Division ceilings; (8) communicates and shares knowledge with Program, FMO Central, and CDC's FMO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future year budget.

Budget Execution Services Branch 6 (CAJES). This branch supports the Coordinating Center for Health Information and Service and the Coordinating Office for Terrorism Preparedness and Emergency Response by performing the following: (1) Provides the legal and regulatory expertise and support to execute CDC's budget within the framework of DHHS, OMB, and Congressional regulations, and policies of CDC OD; (2) manages to the expectations agreed upon in the Budget Execution Services Service Level Agreement; (3) promotes structured, ongoing partnerships with the CC/COs, NCs, Divisions, and Offices; (4) manages and supports Program in all aspects of funds management; (5) provides the leadership and guidance for spend plan creation and administration, in compliance with all Federal guidelines and policies, such as the Anti-Deficiency Act; (6) provides the overall analysis and reconciliation of spend plans to advise Program on future spending decisions; (7) assists Program Officials in developing sub-allocation of CC/CO, NC, and Division ceilings; (8) communicates and shares knowledge with Program, FMO Central, and CDC's FMO Budget Analyst Community; and (9) performs cost-benefit analysis to review financial requests and makes recommendations for future-year budget.

Dated: May 8, 2008.

Joseph Henderson,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–10982 Filed 5–15–08; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 73 FR 20297–3 04, dated April 15, 2008) is amended to reflect the establishment of the Office of Critical Information Integration and Exchange within the National Center for Zoonotic, Vector Borne, and Enteric Diseases, Coordinating Center for Infectious Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: After the functional statements for the *Mycotic Diseases Branch (CVHEG), Division of Foodborne, Bacterial and Mycotic Diseases (CVHE), National Center for Zoonotic, Vector-Borne, and Enteric Diseases (CVH),* insert the following:

Office of Critical Information Integration and Exchange (CVHG). The mission of the Office of Critical Information Integration and Exchange (OCIIX) is to provide a CDC-wide resource that facilitates the exchange, integration, and visualization of relevant information from a variety of sources to enhance Agency and programmatic situational awareness for decision making and early event detection. To carry out its mission, OCIIX: (1) Develops tools that enable social networking and the creation of communities of practice to facilitate the exchange of information essential to developing an accurate and complete picture of developments that could threaten health worldwide; (2) identifies and/or develops information technologies to improve access to the integrated information; (3) detects, analyzes and communicates relevant information from a variety of sources to provide situational awareness services that reduce emergency response times for the CDC Office of the Director and Agency programs; and (4) analyzes, integrates and provides information to key stakeholders to widen their understanding of emerging threats and to enhance the effectiveness of subsequent response strategies.

Dated: May 8, 2008.

Joseph Henderson,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–10986 Filed 5–15–08; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–267]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage Program: Application and Contract Requirements; *Use:* The information collection requirements are mandated by 42 CFR 422. Section 4001 of the Balanced Budget Act of 1997 added sections 1851 through 1859 to the Social Security Act to establish this new program. The Medicare, Medicaid, and SCHIP Benefits Improvement Act and Protection Act of 2000 and sections 201–204 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) added new requirements. Medicare Advantage (MA) organizations (formerly M+C organizations) and potential MA organizations (applicants) use the information to comply with the application requirements and the MA contract requirements. CMS will use this information to approve contract applications, monitor compliance with contract requirements, make proper payment to MA organizations, determine compliance with the new prescription drug benefit requirements established by the MMA, and to ensure that correct information is disclosed to Medicare beneficiaries, both potential enrollees and enrollees. The reported change in burden is due to program growth and revisions to the Medicare Advantage and Prescription Drug Benefit. *Form Number:* CMS–R–267 (OMB# 0938–0753); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions, and Individuals or households; *Number of Respondents:* 9,000,670; *Total Annual Responses:* 9,000,670; *Total Annual Hours:* 8,529,541.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *June 16, 2008*.

OMB Human Resources and Housing Branch, Attention: Carolyn Raffaelli, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: May 7, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–10664 Filed 5–15–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0094]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 16, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0562. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations—(OMB Control Number 0910–0562)—Extension

The Food Quality Protection Act of 1996 (FQPA), which amended the

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (the act), established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. The Environmental Protection Agency (EPA) is responsible for regulating the use of pesticides (under FIFRA) and for establishing tolerances or exemptions from the requirement for tolerances for residues of pesticide chemicals in food commodities (under the act). EPA, in accordance with the FQPA, is in the process of reassessing the pesticide tolerances and exemptions which were in effect when the FQPA was signed into law. When EPA determines that a pesticide's tolerance level does not meet the safety standard under section 408 of the act (21 U.S.C. 346a), the registration for the pesticide may be canceled under FIFRA for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities. Under section 408(l)(2) of the act, when the registration for a pesticide is canceled or modified due to, in whole or in part, dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture (USDA) has responsibility for monitoring residue levels and enforcing pesticide tolerances in egg products and most meat and poultry products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. FDA would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an ''adulterated'' food. However, the channels of trade provision of the act (section 408(l)(5) of the act) addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision states that food containing a residue of such a pesticide shall not be deemed ''adulterated'' by virtue of the residue, if the residue is within the former tolerance, and the responsible party can demonstrate to FDA's satisfaction that the residue is present as the result of an application of the pesticide at a time and in a manner which were lawful under FIFRA.

In the **Federal Register** of May 18, 2005 (70 FR 28544), FDA announced the availability of a guidance document entitled, ''Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency Pursuant to Dietary Risk Considerations.'' The guidance represents the agency's current thinking on its planned enforcement approach to the channels of trade provision of the act and how that provision relates to FDA-regulated products with residues of pesticide chemicals for which tolerances have been revoked, suspended, or modified by EPA under dietary risk considerations. The guidance can be found at *http://www.cfsan.fda.gov/guidance.html*. FDA anticipates that food bearing lawfully applied residues of pesticide chemicals that are the subject of future EPA action to revoke, suspend, or modify their tolerances, will remain in the channels of trade after the applicable tolerance is revoked, suspended, or modified. If FDA encounters food bearing a residue of a pesticide chemical for which the tolerance has been revoked, suspended, or modified, it intends to address the situation in accordance with provisions of the guidance. In general, FDA anticipates that the party responsible for food found to contain pesticide chemical residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, suspended, or modified will be able to demonstrate that such food was handled, e.g., packed or processed, during the acceptable timeframes cited in the guidance by providing appropriate documentation to the agency as discussed in the guidance document. FDA is not suggesting that firms maintain an inflexible set of documents where anything less or different would likely be considered unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so handled during the acceptable timeframes.

Examples of documentation which FDA anticipates will serve this purpose consist of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

FDA is requesting the extension of OMB approval for the information collection provisions in the guidance.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food-processing industries that handle food products that may contain residues of pesticide chemicals after the tolerances for the pesticide chemicals have been revoked, suspended, or modified.

In the **Federal Register** of February 25, 2008 (73 FR 10033), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Submission of documentation	1	1	1	3	3

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA expects the total number of pesticide tolerances that are revoked, suspended, or modified by EPA in the next 3 years to significantly decrease, as EPA concludes its review activity. Thus, the previous estimates for respondents and numbers of responses in table 1 of this document are based on the submissions that the agency has received in the past 3 years and the expectation that the number of submissions will significantly decrease

in the next 3 years. However, to avoid counting this burden as zero, FDA has estimated the burden at one respondent making one submission a year for a total of one annual submission.

The hours per response values were estimated as follows: First, we assumed that the information requested in the guidance is readily available to the submitter. We expect that the submitter will need to gather information from appropriate persons in the submitter's company and to prepare this information for submission to FDA. The submitter will almost always merely need to copy existing documentation. We believe that this effort should take no longer than 3 hours per submission.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Develop documentation process	1	1	1	16	16

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In determining the estimated annual recordkeeping burden, FDA estimated that at least 90 percent of firms maintain documentation, such as packing codes, batch records, and inventory records, as part of their basic food production or import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms that may not be currently maintaining this documentation to develop and maintain documentation, such as batch records and inventory records. In previous information collection requests, this recordkeeping burden was estimated to be 16 hours per record. FDA has retrained its prior estimate of 16 hours per record for the recordkeeping burden. As shown in table 1 of this document, FDA estimates that one respondent will make one submission per year. Although FDA estimates that only 1 out of 10 firms will not be currently maintaining the necessary documentation, to avoid counting the recordkeeping burden for the 1 submission per year as 1/10 of a recordkeeper, FDA estimates that 1 recordkeeper will take 16 hours to develop and maintain documentation recommended by the guidance.

Dated: May 8, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–10985 Filed 5–15–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0073]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Adverse Experience Reporting for Licensed Biological Products; and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 16, 2008.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *baguilar@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0308. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Adverse Experience Reporting for Licensed Biological Products; and General Records—(OMB Control Number 0910–0308)—Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA is required to ensure the marketing of only those biological products which are safe and effective. FDA must, therefore, be informed of all adverse experiences occasioned by the use of licensed biological products. FDA issued the adverse experience reporting (AER) requirements in part 600 (21 CFR part 600) to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's AER system is to flag potentially serious safety problems with licensed biological products, focusing especially on newly licensed products. Although premarket testing discloses a general safety profile of a biological product's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. Reports are obtained from a variety of sources, including patients, physicians, foreign regulatory agencies, and clinical investigators. Information derived from the AER system contributes directly to increased public health protection because such information enables FDA to recommend important changes to the product's labeling (such as adding a new warning), to initiate removal of a biological product from the market when necessary, and to assure the manufacturer has taken adequate corrective action if necessary.

The regulation in § 600.80(c)(1) requires licensed manufacturers to report each adverse experience that is both serious and unexpected, whether

foreign or domestic, as soon as possible but in no case later than 15-calendar days of initial receipt of the information by the licensed manufacturer. These are known as postmarketing 15-day Alert reports. Section 600.80(c)(1) also requires licensed manufacturers to submit any followup reports within 15-calendar days of receipt of new information or as requested by FDA.

Section 600.80(e) requires licensed manufacturers to submit a 15-day Alert report for an adverse experience obtained from a postmarketing clinical study only if there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires licensed manufacturers to report each adverse experience not reported in a postmarketing 15-day Alert report at quarterly intervals, for 3 years from the date of issuance of the biologics license, and then at annual intervals. The majority of these periodic reports will be submitted annually because a large percentage of currently licensed biological products have been licensed longer than 3 years. Section 600.80(i) requires licensed manufacturers to maintain for a period of 10 years records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 requires licensed manufacturers to submit, at an interval of every 6 months, information about the quantity of the product distributed under the biologics license, including the quantity distributed to distributors. These semiannual distribution reports provide FDA with important information about products distributed under biologics licenses, including the quantity, certain lot numbers, labeled date of expiration, number of dosage units, and date of release. Under § 600.90, a licensed manufacturer may submit a waiver request for any requirements that applies to the licensed manufacturer under § 600.80 and 600.81. A waiver request submitted under § 600.90 must include supporting documentation.

Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of a product including any recalls. These recordkeeping requirements serve preventative and remedial purposes by establishing accountability and traceability in the manufacture and distribution of products. These requirements also enable FDA to perform meaningful inspections.

Section 600.12 requires, among other things, concurrently with the performance of each step that all records of each step in the manufacture and distribution of a product be made and retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, manufacturers must maintain records of sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing of a product. Section 600.12(b)(2) requires manufacturers to maintain complete records pertaining to the recall from distribution of any product.

Respondents to this collection of information are manufacturers of biological products. Under table 1 of this document, the number of respondents is based on the estimated number of manufacturers that submitted the required information to the Center for Biologics Evaluation and Research and Center for Drug Evaluation and Research, FDA, in fiscal year (FY) 2006. Based on information obtained from FDA's database system, there were 88 licensed biologics manufacturers. This number excludes those manufacturers who produce blood and blood components and in-vitro diagnostic licensed products, because § 600.80(k) specifically exempts manufacturers of these products from adverse experience reporting requirements. The total annual responses are based on the estimated number of submissions received annually by FDA in FY 2006. However, not all manufacturers have submissions in a given year and some may have multiple submissions. There were an estimated 23,835 15-day Alert reports, 21,872 periodic reports, and 179 lot distribution reports submitted to FDA. The number of 15-day Alert reports for postmarketing studies under § 600.80(e) is included in the total number of 15-day Alert reports. FDA received 6 requests for waiver under § 600.90, all of which were granted. The hours per response are based on FDA experience. The burden hours required to complete the MedWatch Form for § 600.80(c)(1), (e), and (f) are reported under OMB control no. 0910–0291.

In the **Federal Register** of February 15, 2008 (73 FR 8881), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.80(c)(1) and 600.80(e)	88	270.85	23,835	1	23,835
600.80(c)(2)	88	248.55	21,872	28	612,416
600.81	88	2.03	179	1	179
600.90	6	1	6	1	6
Total					636,436

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Under table 2 of this document, the number of respondents is based on the number of manufacturers subject to those regulations. Based on information obtained from FDA's database system, there were 303 licensed manufacturers of biological products in FY 2006. However, the number of recordkeepers listed for § 600.12(a) through (e) excluding (b)(2) is estimated to be 112. This number excludes manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under 21 CFR 606.160 in OMB control no. 0910–0116. The total annual records is based on the annual average of lots released (5,291), number of recalls made (1,841), and total number of adverse experience reports received (45,707) in FY 2006. The hours per record are based on FDA experience.

FDA estimates the burden of this recordkeeping as follows:

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. Of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
600.12	112	47.24	5,291	32	169,312
600.12(b)(2)	303	6.08	1,841	24	44,184
600.80(i)	88	519.40	45,707	1	45,707
Total					259,203

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 13, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–11057 Filed 5–15–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

Date: June 9–11, 2008.

Time: June 9, 2008, 7 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Room 117, Bethesda, MD 20892.

Time: June 10, 2008, 8 a.m. to 8 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Room 117, Bethesda, MD 20892.

Time: June 11, 2008, 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 30, 30 Convent Drive, Room 117, Bethesda, MD 20892.

Contact Person: Norman S Braveman, Assistant to the Director, NIH—NIDCR, 31 Center Drive, Bldg. 31, Room 5B55, Bethesda, MD 20892, 301 594–2089, *norman.braveman@nih.gov*.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about/CouncilCommittees.asp*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10836 Filed 5–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Inner Ear Hair Cells.

Date: May 22, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10837 Filed 5–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Pathobiology of Kidney Disease Study Section, June 12, 2008, 8 a.m. to June 13, 2008, 5 p.m., Hotel Deca, 4507 Brooklyn Avenue, NE., Seattle, WA 98105 which was published in the **Federal Register** on May 2, 2008, 73 FR 24296–24298.

The meeting will be held one day only June 12, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: May 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10840 Filed 5–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special EmphasisPanel Member Conflict: Inner Ear and Cochlea.

Date: May 28, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844,Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical NeuroscienceIntegrated Review Group Clinical Neuroscience and Disease Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846,Bethesda, MD 20892, (301) 435–1121, *bhagavas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis PanelClinical Neuroscience and Disease.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3022D, MSC 7846,Bethesda, MD 20892, (301) 435–1121, *bhagavas@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive NeuroscienceIntegrated Review Group Central Visual Processing Study Section.

Date: June 10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Judith A. Finkelstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844,Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Molecular Neurogenetics.

Date: June 12, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Robert C. Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ITT Member Conflict Application Review.

Date: June 17, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jin Huang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cardiovascular Devices.

Date: June 23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC, 7854 Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Radiation Therapy and Biology.

Date: June 23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Non-HIV Microbial Vaccine Development.

Date: June 23, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037

Contact Person: Jin Huang, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Oncology Fellowship.

Date: June 23–24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Chemoprevention.

Date: June 23, 2008.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Clinical Trials.

Date: June 24, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Denise R. Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawkath@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Sleep and Memory.

Date: June 25, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edwin C. Clayton, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Molecular Biophysics of Voltage-Gated Channels.

Date: June 26–28, 2008.

Time: 7 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: James W. Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Respiratory Sciences.

Date: June 26, 2008.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bonnie L. Burgess-Beusse, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2191C, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Molecular Pathways in Cancer.

Date: June 26, 2008.

Time: 1 p.m. to 3 p.m.,

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Denise R. Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawkath@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Drug Discovery and Therapeutics SBIR/STTR.

Date: June 30, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hungyi Shau, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10948 Filed 5–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review Small Research Grants for Data Analysis and Statistical Methodology.

Date: June 17, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, Md 20892–4878, 301–594–4809, *mary_kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10835 Filed 5–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; National Child Study.

Date: June 8–10, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5b01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10838 Filed 5–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel Hormonal Signals that regulate Ovarian Differentiation.

Date: June 10, 2008.

Time: 1 p.m.to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Administrator, Division Of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Exeuctive Blvd., Rm. 5B01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

Name of Committee: National Institute of Child Health and Human Development, Special Emphasis Panel IEARDA.

Date: June 10, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, Eunice Kennedy Shriver, National Institute for Child Health & Development, 1600 Executive Boulevard, R. 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialmmailnih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10839 Filed 5–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, National Cooperative Drug Discovery Groups.

Date: June 4–5, 2008.

Time: 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Ave., NW., Washington, DC 20006.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892, 301–443–1513, *psherida@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Child Conflicts 2.

Date: June 10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Marina Broitman, Ph.D., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Cognition and Schizophrenia Panel.

Date: June 11, 2008.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Allan F. Mirsky, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Rm. 6157, MSC 9609, Bethesda, MD 20892–9609, 301–496–2551, *afmirsky@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–10841 Filed 5–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Use of Digital Flood Data

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: Section 107 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 requires that geospatial digital flood hazard data distributed by the Federal Emergency Management Agency (FEMA), or its designee, or the printed products derived from that data, be interchangeable and legally equivalent for the determination of the location of 1-in-100-year and 1-in-500-year floodplains, provided that all other geospatial data shown on the printed product meets or exceeds any accuracy standard promulgated by FEMA. This is required for the purposes of flood insurance and floodplain management activities conducted pursuant to the National Flood Insurance Program under the National Flood Insurance Act of 1968. The FEMA Mitigation Directorate has developed a policy to implement this requirement. The policy states: To which FEMA products it applies; that ''printed products'' refers to both printed paper products produced by FEMA and by others; and that the horizontal location of the special flood hazard area on new products is defined by geographic coordinates.

DATES: This notice is effective as of November 29, 2007.

ADDRESSES: The policy is available online at *http://www.fema.gov/library/viewRecord.do?id=3235*. You may also view a hard copy of the policy at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Paul Rooney, Data and Dissemination Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, e-mail: *paul.rooney@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes new Flood Insurance Rate Maps (FIRMs) in the form of paper maps, digital map images (the full-size FIRM Scans and letter-size FIRMettes) and digital geospatial flood hazard data (the Digital Flood Insurance Rate Map (DFIRM) Database product). The previously published maps are available only as paper maps or FIRM Scans/FIRMettes.

As required by 42 U.S.C. 4101 note, FIRM Scans/FIRMettes, published paper FIRMs, DFIRM Database products and printed versions produced from the official digital products are all equivalent to each other and represent official FEMA designations of the areas of special flood hazard, base flood elevations, insurance risk zones and other regulatory information, provided that all other geospatial data shown on the printed product meets or exceeds any accuracy standard promulgated by FEMA.

Beginning in 2001, most new FIRMs began showing a coordinate grid on the printed effective FIRM and are available as a DFIRM Database product. When a coordinate grid is shown on the printed FIRM or when the DFIRM Database version is available, the horizontal location of the flood hazard information is defined with respect to the primary coordinate system shown on the printed FIRM or stored in the DFIRM Database product. The horizontal location of the flood hazard information is not defined by its relationship to the base map features such as streets. If there are conflicting interpretations of the precise horizontal location of the areas of special flood hazard, the conflict shall be resolved using the grid coordinates shown on the printed FIRM or stored in the DFIRM Database product rather than the base map features.

Base map is defined as the set of physical and cultural features shown on a flood map to provide a geographic and visual context to the flood hazard information. Features depicted by the base map include roads, railroads, buildings, lakes, streams, shorelines, jurisdiction boundaries, public land survey system information, land parcel, and orthoimagery.

The policy is available online located at *http://www.fema.gov/library/viewRecord.do?id=3235*. You may also view a hard copy of the policy at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Authority: 42 U.S.C. 4101 note.

Dated: May 7, 2008.

David I. Maurstad,

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

[FR Doc. E8–10932 Filed 5–15–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–845 and G–845S, and Supplement, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form G–845 and G–845S, Document Verification Request, and Document Verification Request Supplement; OMB Control No. 1615–0101.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 4, 2008, at 73 FR 11654, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 16, 2008. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0101. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Document Verification Request and Document Verification Request Supplement.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–845, Form G–845S, and Supplement. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. This information collection allows for the verification of immigration status of certain persons applying for benefits under certain entitlement programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form G–845 and G–845S:

260,026 responses at 5 minutes (.083) per response; Supplement: 128,072 responses at 5 minutes (.083) per response; and electronic queries 9,850,134 queries at 5 minutes (.083) per query.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 849,773 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: May 13, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–11037 Filed 5–15–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–730, Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–730, Refugee/Asylee Relative Petition; OMB Control No. 1615–0037.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 15, 2008.

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 Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control Number 1615–0037 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I–730. Should USCIS decide to revise the Form I–730 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I–730.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Refugee/ Asylee Relative Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–730. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form will be used by an asylee or refugee to file on behalf of his or her spouse and/or children provided that the relationship to the refugee/asylee existed prior to their admission to the United States. The information collected on this form will be used by USCIS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 86,400 responses at 35 minutes (.583) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,371 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: May 13, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–11049 Filed 5–15–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–400, Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form N–400, Application for Naturalization; OMB Control No. 1615–0052.

The Department Homeland Security, U.S. Citizenship and Immigration Services, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until July 15, 2008.

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 Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Officer, 111 Massachusetts Avenue, 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure

to add OMB Control No. 1615–0052 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form N–400. Should USCIS decide to revise the Form N–400 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form N–400.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–400; U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information on this form to determine an applicant's eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 700,000 responses at 6 hours and 8 minutes (6.13 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,291,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: May 13, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–11050 Filed 5–15–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–20]

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: May 16, 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: May 8, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–10630 Filed 5–15–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0116; 21012–11130000–C2]

Draft Bexar County Karst Invertebrates Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Draft Bexar County Karst Invertebrates Recovery Plan. We are soliciting review and comment from the public on this draft recovery plan.

DATES: To ensure consideration, we must receive comments by July 15, 2008.

ADDRESSES: You may obtain copies of the draft recovery plan from Cyndee Watson, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite #200, Austin, Texas, (512–490–0057 ext. 223) or download it from the internet at *http://www.fws.gov/southwest/es/Library/* (type ''Bexar County'' in the document title search field).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite #200, Austin, Texas 78758; telephone 512–490–0057 ext 249.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et. seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service considers all information provided during a public comment period prior to approval of each new recovery plan. The Service and others take these comments into account in the course of implementing recovery plans.

Nine Bexar County karst invertebrates were listed as endangered species on December 26, 2000 (65 FR 81419 81433). These invertebrates are troglobites, spending their entire lives

underground. They inhabit caves and mesocaverns (humanly impassable voids in karst limestone) in Bexar County, Texas. They are characterized by small or absent eyes and pale coloration. These species are *Rhadine exilis, Rhadine infernalis, Batrisodes venyivi, Texella cokendolpheri, Neoleptoneta microps, Cicurina baroni, Cicurina madla, Cicurina venii,* and *Cicurina vespera.*

The draft recovery plan includes scientific information about the species and provides objectives and actions needed to recover the Bexar County karst invertebrates and to ultimately remove them from the list of threatened and endangered species. Recovery actions designed to achieve these objectives include reducing threats to the species by securing an adequate quantity and quality of habitat. This includes selecting caves or cave clusters that represent the range of the species and potential genetic diversity for the nine species, then preserving these karst habitats by preserving their drainage basins and surface communities upon which they rely. Because many aspects of the population dynamics and habitat requirements of the species are poorly understood, recovery is also dependant on incorporating research findings into adaptive management actions. Because four of these species are known to occur in only one cave, full recovery may not be possible for these species.

Public Comments

To comment on the plan, please mail comments to the Field Supervisor, Attention Draft Bexar County Karst Invertebrate Recovery Plan, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758. You may also submit comments electronically to *BexarKIrecplan@fws.gov* or fax to 512–490–0974.

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 we will try to honor your written request to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 24, 2008.

Christopher T. Jones,

Acting Regional Director, Region 2.

[FR Doc. E8–10996 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–N0082; 1112–0000–81420–F2]

East Bay Municipal Utility District Habitat Conservation Plan, East Bay Watershed Lands, Alameda and Contra Costa Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Proposed low-effect habitat conservation plan; request for comment.

SUMMARY: The East Bay Municipal Utility District, Oakland (EBMUD or applicant) has applied to the Fish and Wildlife Service (Service) for a 30-year incidental take permit for seven species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The application addresses the potential for ''take'' of two listed animals, two listed plants, and three currently unlisted species. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the East Bay Municipal Utility District Low-Effect East Bay Habitat Conservation Plan (plan). We request comments on the applicant's application and plan, and the preliminary determination that the plan qualifies as a ''low-effect'' habitat conservation plan, eligible for a Categorical Exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our Environmental Action Statement (EAS), which is also available for public review.

DATES: We must receive written comments on or before June 16, 2008.

ADDRESSES: Please address written comments to Sheila Larsen, Conservation Planning Branch, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, or Eric Tattersall, Branch Chief, Conservation Planning Branch, at the address shown above or at 916–414–6600 (telephone).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Copies of the permit application, plan, and EAS can be obtained from the individuals named above (see **FOR FURTHER INFORMATION CONTACT**). Copies of these documents are available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**). Documents also are available for public inspection, during regular business hours, at the East Bay Municipal Utility District, Orinda, Natural Resources Department, 500 San Pablo Dam Road, Orinda, CA 94563.

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.

Background Information

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or to attempt to engage in such conduct. However, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Although take of listed plant species is not prohibited under the Act, and therefore cannot be authorized under an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan. All species included on the incidental take permit would receive assurances under the Services' ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5).

The applicant seeks an incident take permit for covered activities within 28,200 acres of watershed lands owned

by EBMUD located in Contra Costa and Alameda Counties, California. EBMUD is requesting permits for take of two federally listed animal species, both listed as threatened: California red-legged frog (*Rana aurora draytonii*) and Alameda whipsnake (*Masticophis lateralis euryxanthus*). The two federally listed plant species, both listed as threatened, are Santa Cruz tarplant (*Holocarpha macradenia*) and pallid manzanita (*Arctostaphylos pallida*). The proposed covered species also include three wildlife species that are not currently listed under the Act—western pond turtle (*Clemmys marmorata*), pallid bat (*Antrozous pallidus*), and an unlisted resident population of rainbow trout (*O. mykiss*)—should these species be listed during the life of the permit. These rainbow trout are genetically identical to steelhead, a fish species federally listed as threatened. However, these trout are landlocked above Upper San Leandro Dam, and are considered rainbow trout, not steelhead. Collectively, all of these species are referred to as ''covered species'' in the plan.

EBMUD owns and manages watershed lands in Alameda and Contra Costa Counties, located in the San Francisco Bay Area of California. These lands surround five reservoirs (Briones, San Pablo, Upper San Leandro, Chabot, and Lafayette) and a portion of one basin that does not have a reservoir (Pinole Valley). EBMUD reservoirs store drinking water and emergency water supplies for 1.3 million people residing in Alameda and Contra Costa Counties.

Covered activities include the following watershed management and maintenance activities: A biodiversity program; forestry program; livestock grazing; agricultural operations; fire and fuels management; a trench spoils storage and removal program for the north and south watershed areas; maintenance activities related to recreational activities; and permitted watershed access on fire roads and designated trails. The implementation of mitigation measures such as creek restoration activities are also included as covered activities. The covered activities are described more fully in the plan, and additional information on EBMUD management activities can be found in their East Bay Watershed Master Plan, Fire Management Plan, and EBMUD's Range Resource Management Plan. EBMUD's watershed planning documents are available at this link: *http://www.ebmud.com/water_&_environment/environmental_protection/*.

The applicant proposes to avoid, minimize, and mitigate the effects to the covered species associated with the covered activities by fully implementing the plan. To minimize and mitigate the impacts of the covered activities, the applicant will continue ongoing conservation activities and develop additional measures for the further protection of covered species, if necessary. Minimization measures will include, but are not limited to, seasonal restrictions on when work may be conducted, preconstruction surveys, and temporary removal of covered species from work areas. General mitigation measures will include restoration of disturbed habitat, improved grazing practices, maintenance of stockponds for California red-legged frogs and western pond turtles, riparian restoration, and conversion of non-native forests to native species.

Santa Cruz tarplant is represented by a single experimental population that has not been observed for 10 years. It will be adaptively managed to encourage the re-establishment of this fire-adapted species. Pallid manzanita will not be affected by covered activities, but competition with other species will be reduced through pruning of nearby vegetation. Rainbow trout habitat will be improved through revegetation of affected areas and fencing of creek corridors, and placement of spawning gravel to provide substrate if no spawning is observed on EBMUD lands. Coastal scrub that provides habitat for Alameda whipsnakes will be allowed to encroach into grassland so that the overall amount of this vegetation community does not vary by more than 1 percent due to covered activities. Mitigation measures for pallid bat include maintenance of moderate grazing levels; education of grazing lessees, signage on the known habitat, and installation of bat boxes adjacent to the currently used site.

Alternatives

The Service's proposed action consists approving the applicant's plan and issuance of an incidental take permit for the applicant's Covered Activities. As required by the Act, the applicant's plan considers alternatives to the take under the proposed action. The plan considers the environmental consequences of one alternative to the proposed action, the No Action alternative. Under the No Action Alternative, no permit would be issued and projects would be reviewed and permitted on an individual basis. The proposed action alternative consists of issuance of the incidental take permit for the applicant's proposed project, which includes the activities described above.

National Environmental Policy Act

As described in our EAS, we have made the preliminary determination that approval of the proposed plan and issuance of the permit would qualify as a categorical exclusion under NEPA, as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). Our EAS found that the proposed plan qualifies as a ''low-effect'' habitat conservation plan, as defined by the Service's Habitat Conservation Planning Handbook (November 1996). Determination of low-effect habitat conservation plans is based on the following three criteria: (1) Implementation of the proposed plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the California red-legged frog, Alameda whipsnake, western pond turtle, pallid bat, rainbow trout, Santa Cruz tarplant, and pallid manzanita, from the implementation of the covered activities described in the plan, or from mitigation conducted as part of this plan. We will make the final permit decision no sooner than 30 days after the date of this notice.

Dated: May 12, 2008.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. E8–10994 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0086; 20124–11120000–F2]

Regional Habitat Conservation Plan, Hays County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement; announcement of public scoping meeting; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare an Environmental Impact Statement (EIS) to evaluate the impacts of, and alternatives to, the proposed issuance of an Incidental Take Permit (ITP) under the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) to Hays County, Texas (Applicant). We also announce a public scoping meeting and public comment period.

DATES: We must receive written comments on alternatives and issues to be addressed in the EIS by July 18, 2008. We will hold a public scoping meeting on June 18, 2008, from 5:30 p.m. to 8:30 p.m. at the San Marcos Activity Center, 501 E. Hopkins Road, San Marcos, TX 78666.

ADDRESSES: Send your comments or request for information by any one of the following methods:

- *U.S. mail:* Field Supervisor, Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.
- *Facsimile:* 512–490–0974.
- *E-mail: info@hayscountyhcp.com.*

FOR FURTHER INFORMATION CONTACT:

- *EIS Information:* Ms. Allison Arnold, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; 512–490–0057 (phone); 512–490–0974 (fax); or *Allison_Arnold@fws.gov* (e-mail).
- *Hays County RHCP Information:* County Judge Liz Sumter, 111 E. San Antonio St., Suite 300, San Marcos, TX 78666; 512–393–2205 (phone); or 512–393–2282 (fax).
- *Other Information:* You may obtain additional information on the Hays County RHCP on the Internet at *http://www.hayscountyhcp.com.*

SUPPLEMENTARY INFORMATION: We intend to prepare an EIS to evaluate the impacts of, and alternatives to, the proposed issuance of an ITP under the Act, to the Applicant. We also announce a public scoping meeting and public comment period. The Applicant proposes to apply for an ITP supported by development and implementation of the Hays County Regional Habitat Conservation Plan (RHCP). The Hays County RHCP will include measures necessary to minimize and mitigate the impacts of the proposed taking on the federally-listed species. We furnish this notice in compliance with the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and its implementing regulations (40 CFR 1500–1508), in order to: (1) Advise other Federal and state agencies, affected tribes, and the public of our intent to prepare an EIS; (2) announce the initiation of a public scoping period; and (3) obtain suggestions and information on the scope of issues and alternatives we will consider in our EIS. We intend to gather the information necessary to determine impacts and alternatives for an EIS regarding our potential issuance of an ITP to the Applicant, and the implementation of the Hays County RHCP.

Purpose and Need for Action

Section 9 of the Act and its implementing regulations prohibit take of species listed under the Act as endangered or threatened. The definition of ''take'' under the Act includes the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in any such conduct (16 U.S.C. 1538). Regulations define ''harm'' as significant habitat modification or degradation that results in actual death or injury to the listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Section 10(a)(1)(B) of the Act requires us to issue ITPs to non-Federal entities for take of endangered and threatened species, provided the following criteria are met: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will develop a habitat conservation plan and ensure that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out any other measures that we may require as being necessary or appropriate for the purposes of the habitat conservation plan.

We anticipate that under the ITP, the Applicant will request coverage for a period of 30 years from the date of the RHCP approval. Implementation of the Hays County RHCP would result in the establishment of preserves intended to provide for the conservation of the covered species occupying those preserves. Research, monitoring, and adaptive management would be used to facilitate accomplishment of these goals.

Proposed Action

The proposed action is the issuance of an ITP for the covered species in Hays County. The Applicant would develop and implement the Hays County RHCP, which must meet the requirements in section 10(a)(2)(A) of the Act by providing measures necessary to minimize and mitigate the impacts of the proposed taking on the covered species.

Activities proposed for coverage under the ITP include otherwise lawful activities that would occur consistent with the Hays County RHCP and include, but are not limited to, construction and maintenance of public projects and infrastructure as well as residential, commercial, and industrial development.

Species the Applicant has recommended for inclusion as covered species in the Hays County RHCP include the golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*). For these covered species, Hays County would seek incidental take authorization. The Hays County RHCP would also address 40 ''evaluation species'' (39 terrestrial or aquatic karst species and the Cagle's map turtle (*Graptemys caglei*)) and 15 ''additional species'' (6 listed aquatic species, 3 unlisted plants, and 6 unlisted surface aquatic species). Incidental take authorization for the evaluation species may become necessary to include in the proposed ITP over the term of the Hays County RHCP; however, these species will not be initially included as ''covered'' species. Evaluation species may be currently unlisted, but could become listed in the foreseeable future. The Hays County RHCP may include conservation measures to benefit evaluation species, where practicable, and support research to help fill data gaps regarding the biology, habitat, distribution, or management of these species. The research supported by the RHCP may aide in the conservation of these species or facilitate obtaining incidental take coverage, if these species become listed in the future. For the 15

''additional species,'' Hays County would not seek incidental take authorization because these species either are not currently listed as threatened or endangered, or are not likely to experience take from covered activities, or insufficient information is available to adequately evaluate take and mitigation.

Alternatives

The proposed action and alternatives that will be developed in the EIS will be assessed against the No Action/No Project Alternative, which assumes that some or all of the current and future take of covered species in Hays County would be implemented individually, one at a time, and be in compliance with the Act. The No Action/No Project alternative implies that the impacts from these potential activities on the covered species would be evaluated and mitigated on a project-by-project basis, as is currently the case. For any activities involving take of listed species due to non-Federal actions, individual Section 10(a)(1)(B) permits would be required. Without a coordinated, comprehensive conservation approach for Hays County, listed species may not be adequately addressed by individual project-specific mitigation requirements, unlisted candidate and other rare species would not receive proactive conservation actions, and mitigation would be less cost effective in helping Federal and non-Federal agencies work toward recovery of listed species. Current independent conservation actions would continue, although some of these are not yet funded. A reasonable range of alternatives would also be considered, along with the associated impacts of the various alternatives.

Scoping Meeting

A primary purpose of the scoping process is to receive suggestions and information on the scope of issues and alternatives to consider when drafting the EIS, and to identify, rather than debate, significant issues related to the proposed action. In order to ensure that we identify a range of issues and alternatives related to the proposed action, we invite comments and suggestions from all interested parties. We will accept oral and written comments at this meeting. You may also submit your comments to the address listed in **ADDRESSES**. Once the draft EIS RHCP are completed, additional opportunity for public comment on the content of these documents and an additional public meeting will be provided.

We will conduct a review of this project according to the requirements of NEPA and its regulations; other appropriate Federal laws, regulations, policies, and guidance; and Service procedures for compliance with those regulations.

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact the Service at the address below no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

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 your personal identifying information from public review, we cannot guarantee we will be able to do so.

Environmental Review

The EIS will be prepared in accordance with the requirements of NEPA, its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and the Service's procedures for compliance with those regulations. The EIS will analyze the proposed action, as well as a range of reasonable alternatives and the associated impacts of each. The EIS will be the basis for our evaluation of impacts to the covered species and the range of alternatives to be addressed. We expect the EIS to provide biological descriptions of the affected species and habitats, as well as the effects of the proposed action on resources such as: vegetation, wetlands, wildlife, threatened or endangered species and rare species, geology and soils, air quality, water resources, flood control, water quality, cultural resources (prehistoric, historic, and traditional cultural properties), land use, recreation, water use, local economy, and environmental justice.

After the environmental review is complete, we will publish a notice of availability along with a request for comment on the draft EIS and the applicant's permit application, which will include the Hays County RHCP. The draft EIS and RHCP are expected to be completed and available to the public by January 2009.

Thomas L. Bauer,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. E8–10941 Filed 5–15–08; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0024]; [20124–1113–0000–F2]

Williamson County Regional Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft environmental impact statement, draft habitat conservation plan, and permit application; announcement of a public hearing.

SUMMARY: Williamson County, Texas (Applicant), has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (TE–181840–0) under section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The requested permit, which would be in effect for a period of 30 years, if granted, would authorize incidental take of the following federally listed species: Golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapilla*), Bone Cave harvestman (*Texella reyesi*), and Coffin Cave mold beetle (*Batrisodes texanus*). The proposed take would occur in Williamson County, Texas, as a result of activities including, but not limited to, road construction, maintenance, and improvement projects; utility construction and maintenance; school development and construction; public or private construction and development; and land clearing. Such actions cause effects to upland (bird) and underground (karst) habitats. Williamson County has completed a draft Habitat Conservation Plan (dHCP) as part of the application package. We have issued a draft environmental impact statement (dEIS) that evaluates the impacts of, and alternatives to, possible issuance of an incidental take permit (ITP).

DATES: To ensure consideration, we must receive written comments on or before close of business (4:30 p.m. CST) July 15, 2008. We will also accept oral and written comments at a public hearing to be held on June 16, 2008, 5 p.m.to 8 p.m., Williamson County

Courthouse, Commissioners Court—2nd Floor West, 710 Austin Avenue, Georgetown, Texas 78626.

ADDRESSES: You may obtain copies of the dEIS and dHCP by going to the Williamson County Conservation Foundation Web site at *http://wilcogov.org/wccf/report.htm*. Alternatively, you may obtain compact disks with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; calling (512) 490–0057; or faxing (512) 490–0974. A limited number of printed copies of the dEIS and dHCP are also available, by request, from Mr. Zerrenner. Copies of the dEIS and dHCP are also available for public inspection and review at the following locations (by appointment only at government offices):

—Department of the Interior, Natural Resources Library, 1849 C. St., NW., Washington, DC 20240.

—U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4012, Albuquerque, NM 87102.

—U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4012, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490–0057.

SUPPLEMENTARY INFORMATION: Written comments may be submitted to Mr. Adam Zerrenner (see above). We will also accept written and oral comments at a public hearing (see **DATES**).

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Under the National Environmental Policy Act (NEPA), this notice advises the public that we have gathered the information necessary to determine impacts and formulate alternatives for the EIS related to the potential issuance of an ITP to Williamson County; and that the Applicant has developed an HCP which describes the measures the applicant has agreed to undertake to minimize and mitigate the effects of incidental take of federally listed species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Act.

Background

Our initial notice of intent to prepare an EIS and hold public scoping meetings published in the **Federal Register** on June 1, 2007 (64 FR 30604). A summary of comments provided during the 2007 scoping periods, which included a public meeting held June 14, 2007, in Georgetown, Texas, is available on the Williamson County Conservation Foundation Web site at *http://wilcogov.org/wccf/report.htm*.

The Williamson County Regional Habitat Conservation Plan (WCRHCP) and the conservation program described in the plan were developed in a process involving participants and stakeholders from potentially affected or interested groups in Williamson County. The groups are organized into a Citizens Advisory Committee and a Biological Advisory Team that have overseen the development of the WCRHCP. The Williamson County Conservation Foundation Web site contains information on meetings, documents, and the status of the process.

Proposed Action

The proposed action involves the issuance of an ITP by the Service for covered activities in Williamson County, pursuant to section 10(a)(1)(B) of the Act. The activities that would be covered by the ITP are road construction, maintenance, and improvement projects; utility construction and maintenance; school development and construction; public or private construction and development; and land clearing. The ITP will cover Williamson County, Texas, within the range of the covered species.

The requested term of the permit is 30 years. To meet the requirements of a section 10(a)(1)(B) ITP, the Applicant has developed and will implement the WCRHCP, which describes the conservation measures the Applicant has agreed to undertake to minimize and mitigate for incidental take of golden-cheeked warbler, black-capped vireo, Bone Cave harvestman, and Coffin Cave mold beetle to the maximum extent practicable, and ensures that incidental take will not appreciably reduce the likelihood of the survival and recovery of these species in the wild.

Alternatives: Two alternatives to the proposed action we are considering as part of this process are:

1. No Action—No ITP would be issued. This alternative would require individuals to seek authorization through section 7 or section 10(a)(1)(B) to address incidental take resulting from their actions in Williamson County or avoid taking actions that would result in incidental take.

2. Modified (Reduced Take and Mitigation) WCRHCP—This alternative would only cover take of the golden-cheeked warbler and Bone Cave harvestman. The amount of authorized take and mitigation would be reduced for both species.

Section 9 of the Act and its implementing regulations prohibit the ''taking'' of threatened and endangered species. However, under limited circumstances, we may issue permits to take listed wildlife species incidental to, and not the purpose of, otherwise lawful activities.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6). In addition, Chapter 83 of the Texas Parks and Wildlife Code places State-law requirements on the development of regional HCPs. In accordance with Chapter 83.015(f) of the Code, after notice and hearing, a regional HCP, including any mitigation fee, and the size of the habitat preserves may be based on any recovery criteria applicable to each endangered species to be covered by the regional HCP.

Christopher T. Jones,

Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. E8–10942 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on June 3–4, 2008 in the 2nd Floor Boardroom of the American Institute of Architects Building, 1735 New York Avenue, NW., Washington, DC 20006. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, has been established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Discussion of NGAC Bylaws/NGAC Mission

—Geospatial Line of Business/OMB Circular A–16

—Imagery for the Nation

—Subcommittee Reports

—National Geospatial Strategy Design

The meeting will include an opportunity for public comment during the morning of June 4. Comments may also be submitted to the NGAC in writing. While the meeting will be open to the public, seating may be limited due to room capacity.

DATES: The meeting will be held on June 3–4, from 1 p.m. to 5 p.m. on June 3, and from 9 a.m. to 5 p.m. on June 4.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at *http://www.fgdc.gov/ngac*.

Dated: May 12, 2008.

Ivan DeLoatch,

Staff Director, Federal Geographic Data Committee.

[FR Doc. E8–10928 Filed 5–15–08; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6652–J, AA–6652–K, AA–6652–A2; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Far West Incorporated. The lands are in the vicinity of Chignik, Alaska, and are located in:

Seward Meridian, Alaska

T. 42 S., R. 57 W.,
Secs. 28 and 29;
Secs. 32, 33, and 34.
Containing approximately 3,199 acres.
T. 43 S., R. 57 W.,
Secs. 13 and 14.
Containing approximately 345 acres.
Aggregating approximately 3,544 acres.

The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Far West Incorporated. Notice of the decision will also be published four times in the Bristol Bay Times.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 16, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–10990 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–300–9131–PP]

Information Notice of Planning Criteria for the Programmatic Environmental Impact Statement for Leasing of Geothermal Resources

AGENCY: Bureau of Land Management, Interior.

ACTION: Information Notice of Planning Criteria.

SUMMARY: On June 13, 2007, the Department of the Interior, Bureau of Land Management (BLM), and the United States Department of Agriculture, Forest Service (FS), published in the **Federal Register** [72FR32679] a Notice of Intent (NOI) to prepare a joint Programmatic Environmental Impact Statement (PEIS) to analyze the leasing of BLM- and FS-administered lands with potential for geothermal resources in 11 western states and Alaska. The Federal Land Policy and Management Act (FLPMA) requires the BLM to develop land use plans, also known as Resource Management Plans (RMPs), to guide the BLM's management of the public lands. The BLM's land use planning regulations, which implement FLPMA, require the BLM to publish, and provide for public review of, the proposed planning criteria that will guide the BLM's land use planning process. The purpose of this Information Notice is to identify the RMPs that the BLM may amend and set out the proposed planning criteria that would guide the BLM's planning amendment process. Please note that while the preparation of the PEIS is a joint project with the FS, this Notice applies only to public lands that the BLM manages and does not apply in any way to lands that the FS administers. The FS manages lands that are under its jurisdiction under a separate statutory and regulatory framework.

DATES: Comments concerning the BLM's preliminary list of RMPs to be amended (identified by Field Office) and proposed planning criteria should be received by June 16, 2008. Individuals, groups, or other agencies who

responded to previous scoping efforts for this PEIS are not required to respond to this Notice. The BLM considered comments submitted in response to the previous Notice during development of the planning criteria proposed in this Notice.

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

- *E-mail: geothermal_EIS@blm.gov.*
- *Fax:* 1–866–625–0707.
- *U.S. Mail:* Geothermal Programmatic EIS, c/o EMPS Inc., 182 Howard Street, Suite 110, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: For further information, including information on how to comment, you may contact Jack G. Peterson, Bureau of Land Management, at 208–373–4048, *Jack_G_Peterson@blm.gov* or visit the PEIS Web site at *http://www.blm.gov/Geothermal_EIS.*

SUPPLEMENTARY INFORMATION: FLPMA requires the BLM to develop land use plans, also known as RMPs, to guide the BLM's management of the public lands. In order for geothermal resource leasing and development to take place on the public lands that the BLM manages, such activities must be provided for in these RMPs. The aforementioned NOI published by the BLM and the FS initiated a lengthy and comprehensive scoping process, including 10 public meetings held throughout the western United States. This Notice fulfills the BLM's obligation under FLPMA and the BLM's planning regulations (43 CFR 1610.2(f) and 43 CFR 1610.4–2) to notify the public that in response to input during the scoping process, the BLM has developed proposed planning criteria to guide the amendment of the listed RMPs, including the analysis of the amendments and their reasonable alternatives in the PEIS. Please note that while the preparation of the PEIS is a joint project with the FS, this Notice applies only to public lands that the BLM manages and does not apply in any way to lands that the FS administers. The FS manages lands that are under its jurisdiction under a separate statutory and regulatory framework.

Planning criteria are the constraints, standards, and guidelines that determine what the BLM will or will not consider during its planning process. As such, they establish parameters and help focus analysis of the issues identified in scoping, and structure the preparation of the PEIS in so far as it addresses amendment of BLM RMPs, including data collection, analysis and decision making. The BLM welcomes public comment on the following proposed planning criteria, which would be used in the development of the PEIS as it is prepared to analyze these BLM RMP amendments:

- The BLM will prepare the PEIS and BLM RMP amendments in compliance with the Federal Land Policy and Management Act, the Endangered Species Act, the Clean Water Act, the Clean Air Act, the National Environmental Policy Act and all other applicable laws, Executive Orders and BLM management policies.
- The BLM will use the PEIS as the analytical basis for any decision it makes to amend an individual land use plan as necessary to respond to the potential for increased levels of geothermal resource leasing and development on BLM-administered lands.
- The BLM will develop a reasonably foreseeable development (RFD) scenario to predict levels of development and will identify lands to be allocated as open, closed, and open with restrictive stipulations to geothermal leasing in the affected plans.
- The BLM will limit its amendment of these plans to geothermal resource leasing and development issues and will not address management of other resources, although the BLM will consider and analyze the impacts from this increased use on other managed resource values.
- The BLM will continue to manage other resources in the affected planning areas under the pre-existing terms, conditions and decisions in the applicable RMPs for those other resources.
- The BLM will recognize valid existing rights under the RMPs, as amended.
- The BLM will coordinate with local, state, tribal and Federal agencies in the PEIS and plan amendment process to strive for consistency with their existing plans and policies, to the extent practicable.
- The BLM will coordinate with tribal governments and will provide strategies for the protection of recognized traditional uses in the PEIS and plan amendment process.
- The BLM will take into account appropriate protection and management of cultural and historic resources in the PEIS and plan amendment process, and will engage in all required consultation.
- The BLM will recognize in the PEIS and plan amendments the specific niche occupied by public lands in the life of the communities that surround them and in the nation as a whole.
- The BLM will make every effort to encourage public participation throughout the process.
- The BLM has the authority to develop protective management prescriptions for lands with wilderness characteristics within RMPs. As part of the public involvement process for land use planning, the BLM will consider public input regarding lands to be managed to maintain wilderness characteristics.
- Environmental protection and energy production are both desirable and necessary objectives of sound land management practices and are not to be considered mutually exclusive priorities.
- The BLM will consider and analyze relevant climate change impacts in its land use plans and associated NEPA documents, including the anticipated climate change benefits of geothermal energy.
- The BLM will prepare the PEIS in compliance with the Geothermal Steam Act, as amended, and the legislative directives set forth in the Energy Policy Act of 2005.
- The BLM will use geospatial data that are automated within a Geographic Information System (GIS) to facilitate discussions of the affected environment, formulation of alternatives, analysis of environmental consequences, and display of results.

The following is a list of BLM Field Offices that manage lands that BLM has identified as having geothermal potential. You may view these areas on a map with a GIS overlay showing the BLM and the FS jurisdictional boundaries at *http://www.blm.gov/Geothermal_EIS.* Some BLM offices may decide not to use this PEIS and amendment process to amend certain RMPs that appear on this list because those offices may already have land use plan amendments or revisions underway or recently completed. Please contact your local BLM office for more information. In addition, the BLM will exclude many units or areas within certain RMPs from any consideration for geothermal development. The plan amendments will reflect the fact that some units or portions of the areas identified as having geothermal resource potential will not be developed because they are unavailable for leasing, either by statute, regulation or other authority. These designations are described at 43 CFR 3201.11, and include, but are not limited to: Lands where the Secretary has determined that issuing a lease would cause unnecessary or undue degradation to public lands and resources; lands contained within a unit of the National Park System, lands within a National Recreation Area; and lands where the Secretary determines after notice and comment that

geothermal operations are reasonably likely to result in a significant adverse effect on a significant thermal feature within a National Park System unit, for example, the geothermal features in Yellowstone National Park; wilderness areas; wilderness study areas; fish hatcheries; wildlife management areas; Indian trust lands; and other areas referred to in the above regulation. As mentioned above, this Notice does not address the FS lands. Therefore, no affected Forests are listed below. The BLM Field Offices that manage lands that have geothermal resource potential are as follows (Where the name of the BLM Field Office that has jurisdiction over a Resource Area differs from the name of the District Office, the name of the District office appears in parentheses following the name of the Field Office. A table identifying the affected Field Offices along with the name of the affected RMP under its jurisdiction, which sometimes differ, will appear in the Draft EIS, and on the Web site above in the near future.

State	Field office (district office)
Alaska	Central Yukon (Fairbanks).
	Anchorage (Anchorage).
	Glennallen (Anchorage).
Arizona	Arizona Strip (Arizona Strip).
	Kingman (Colorado River).
	Lake Havasu (Colorado River).
	Yuma (Colorado River).
	Safford (Gila).
	Tucson (Gila).
	Hassayampa (Phoenix).
	Lower Sonoran (Phoenix).
California	Barstow (California Desert).
	El Centro (California Desert).
	Needles (California Desert).
	Palm Springs-South Coast (California Desert).
	Ridgecrest (California Desert).
	Alturas.
	Arcata.
	Bakersfield.
	Bishop.
	Eagle Lake.
	Hollister.
	Redding.
	Surprise.
	Ukiah.
Colorado	Columbine (San Juan).
	Del Norte (San Luis Valley).
	Dolores (San Juan).
	Glenwood Springs.
	Grand Junction.
	Gunnison.
	Kremmling.
	La Jara (San Luis Valley).
	Little Snake.
	Pagosa Springs (San Juan).
	Royal Gorge.
	Saguache (San Luis Valley).
	Uncompahgre.
	White River.
Idaho	Bruneau (Boise).
	Four Rivers (Boise).
	Owyhee (Boise).
	Cottonwood (Coeur d'Alene).
	Challis (Idaho Falls).
	Pocatello (Idaho Falls).
	Salmon (Idaho Falls).
	Upper Snake (Idaho Falls).
	Burley (Twin Falls).
	Jarbridge (Twin Falls).
	Shoshone (Twin Falls).
Montana	Billings.
	Butte.
	Dillon.
	Lewistown.
	Malta.
	Miles City.
	Missoula.
Nevada	Carson City.
	Battle Mountain.
	Carson City.
	Elko.
	Ely.
	Las Vegas.
	Winnemucca.
New Mexico	Rio Puerco (Albuquerque).
	Soccoro (Albuquerque).
	Farmington.
	Taos (Farmington).
	Las Cruces.
	Carlsbad (Pecos).
	Roswell (Pecos).
Oregon/Washington	Andrews (Burns).
	Three Rivers (Burns).
	Upper Willamette (Eugene).
	Klamath Falls (Lakeview).
	Lakeview (Lakeview).
	Ashland (Medford).
	Butte Falls (Medford).
	Central Oregon (Prineville).
	Deschutes (Prineville).
	Cascades (Salem).
	Border (Spokane).
	Wenatchee (Spokane).
	Baker (Vale).
	Jordan (Vale).
	Malheur (Vale).
Utah	Cedar City.
	Fillmore.
	Kanab.
	Richfield.
	Salt Lake.
	St. George.
Wyoming	Vernal.
	Buffalo.
	Casper.
	Cody.
	Kemmerer.
	Lander.
	Newcastle.
	Pinedale.
	Rawlins.
	Rock Springs.
	Worland.

You may submit comments in writing on the stated planning criteria and plans to be amended using one of the methods listed in the **ADDRESSES** section. 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.

Authority: 43 CFR 1610.2(f)(2).

Michael D. Nedd,

Assistant Director, Minerals and Realty Management, Bureau of Land Management.

[FR Doc. E8–11059 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008-OMM–0025]

MMS Information Collection Activity: 1010–0170 Coastal Impact Assistance Program (CIAP), Revision of a Collection; Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revised information collection (1010–0170).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to revise an approval of the paperwork requirements that address the MMS's Coastal Impact Assistance Program (CIAP) which is a grant program. This notice also provides the public a second opportunity to comment on the paperwork burden of these requirements.

DATES: Submit written comments by June 16, 2008.

ADDRESSES: You may submit comments by any either of the following methods listed below.

• Either by fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0170).

• *Electronically:* go to *http://www.regulations.gov.* Under the tab ''More Search Options,'' click Advanced Docket Search, then select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2008–OMM–0025 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. The MMS will post all comments.

• Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0170'' in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch, (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the ICR and the authority that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Coastal Impact Assistance Program.

OMB Control Number: 1010–0170.

Abstract: With the passage of the Energy Policy Act of 2005 (EPAct), the Minerals Management Service (MMS) was given responsibility for the Coastal Impact Assistance Program (CIAP) through the amendment of section 31 of the Outer Continental Shelf Lands Act (43 U.S.C. 1356a Appendix A). The following requirements from this amendment necessitate the collection of information.

(d) AUTHORIZED USES.—

(1) IN GENERAL.—A producing State or coastal political subdivision shall use all amounts received under this section, including any amount deposited in a trust fund that is administered by the State or coastal political subdivision and dedicated to uses consistent with this section, in accordance with all applicable Federal and State law, only for 1 or more of the following purposes:

(A) Projects and activities for the conservation, protection, or restoration of coastal areas, including wetland.

(B) Mitigation of damage to fish, wildlife, or natural resources.

(C) Planning assistance and the administrative costs of complying with this section.

(D) Implementation of a federally-approved marine, coastal, or comprehensive conservation management plan.

(E) Mitigation of the impact of outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

(2) COMPLIANCE WITH AUTHORIZED USES.—If the Secretary determines that any expenditure made by a producing State or coastal political subdivision is not consistent with this subsection, the Secretary shall not disburse any additional amount under this section to the producing State or the coastal political subdivision until such time as all amounts obligated for unauthorized uses have been repaid or reobligated for authorized uses.

(3) LIMITATION—Not more than 23 percent of amounts received by a producing State or coastal political subdivision for any 1 fiscal year shall be used for the purposes described* * *

In September 2006, CIAP draft guidelines were written which were then amended. As this program has evolved and developed, more information needs to be submitted by the government jurisdictions to meet all the requirements of the CIAP State Plan Guidelines as well as requirements on the procurement contracts. Responses are mandatory or required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. The MMS protects information considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

In order to receive funds, according to the EPAct, the states must submit CIAP State Plans that contain required components including an implementation plan of the state's program and identification of the proposed use of CIAP funds. The identification will be brief descriptions of the proposed projects. Upon approval, recipients will be able to submit grant applications for a project. Applicants submit proposals for funding in response to a Notice of Funding Availability that we publish on Grants.gov and on our program web pages. Proposals are submitted through Grants.gov, e-mail, or mail. An application consists of OMB required forms for grants; a detailed project description or narrative to demonstrate that the project has maintained the integrity of the brief description in the Plan and still meets EPAct criteria; and documentation such as Federal, State, or local government required permits with which the recipient is stating it has met Federal, State, or local laws.

Once an application for a project is approved, the MMS is required to monitor the projects to determine that the CIAP funds are being used for appropriate expenses. The monitoring will be achieved through the grant regulations that require, at a minimum, a recipient to provide an annual progress and financial status reports. Recipients are evaluated by contracting officers via Grants.gov application efforts. The recipients that are determined by the evaluations to likely have difficulties in implementing and managing the CIAP funded projects will be required to submit semi-annual reports. Once the recipient has demonstrated the ability to implement and manage their projects, the requirement can be returned to annual reports.

The MMS needs the information required so that technical experts can determine how well it addresses the requirements identified in the authorizing EPAct legislation and monitor the projects to meet specific requirements.

Frequency: Submissions are annually, bi-annually, or specific to the requirement which is usually on occasion.

Estimated Number and Description of Respondents: Approximately 73 total respondents. This includes 6 states and 67 boroughs, parishes, etc.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The estimated annual ''hour'' burden for this information collection is a total of 13,339 hours. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

CIAP reporting and/or recordkeeping requirement	Hour burden	Average No. of annual reponses	Annual burden hours
Submit Project Narrative.	42	192 projects	8,064
Submit annual Performance Reports.	8	192 reports	1,536
Submit bi-annual performance reports	8	192 reports	1,536
Notify MMS in case of delays, adverse conditions, etc., which impair ability to meet objectives of the award including statement of action take or contemplated or assistance required (included non-construction and construction grants).	8	45 notifications	360
Request termination and supporting information *	6	7 requests	42
Retain all records/documentation for 3 years *	.5	192 projects	96
Retain records longer than 3 years if they relate to claim, audit, litigation, etc.	Exempt under 5 CFR 1320.4(a)(2), (c)		0
Telephone follow-up discussion on Financial Capabilities	8	76 discussions	608
Develop language and individual signage at CIAP Sites—Estimated 30 construction projects with temp signs initially—permanent signs 2–4years *.	8	30 signs	240
Submission of photographs/cds of projects for tracking purposes *	4	200 projects	800
Voluntarily submit draft Coastal Impact Assistance Plan with appropriate supporting documentation.	1	4 plans	4
Submit final Coastal Impact Assistance Plan and all supporting documentation (i.e., Governor's certification of public participation; Appendices C, D, and E).	1	4 plans	4
Request delay by states for submitting final plan, with relevant data	1	1 request	1
Request minor changes and/or amendments to a plan	8	6 requests	48
Subtotal		1,141 Responses	13,339

* Initially determined that this will be minimal burden until more respondents are actively involved in a CIAP project.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no paperwork ''non-hour cost'' burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on February 11, 2008, we published a **Federal Register** notice (73 FR 7759) outlining the collection of information and announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We have received no comments in response to this effort.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days.

Therefore, to ensure maximum consideration, OMB should receive public comments by June 16, 2008.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: April 21, 2008.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E8–11003 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands National Recreation Area Advisory Council; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Boston Harbor Islands National Recreation Area.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Boston Harbor Islands National Recreation Area Advisory Council will be held on Wednesday, June 4, 2008, at 4 p.m. to 6 p.m. at Massachusetts State House, 24 Beacon Street, Gardner Auditorium, Boston, MA 02133.

This will be a quarterly meeting of the Council. The agenda will include a discussion of a proposal for a learning center, next steps for the council, report from the Superintendent, and public comment.

The meeting will be open to the public. Any person may file with the Superintendent a written statement concerning the matters to be discussed. Persons who wish to file a written statement at the meeting or who want further information concerning the meeting may contact Superintendent Bruce Jacobson at (617) 223–8667.

DATES: June 4, 2008 at 4 p.m.

ADDRESSES: Massachusetts State House, 24 Beacon Street, Gardner Auditorium, Boston, MA 02133.

FOR FURTHER INFORMATION CONTACT: Superintendent Bruce Jacobson, (617) 223–8667.

SUPPLEMENTARY INFORMATION: The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands NRA.

Dated: April 28, 2008.

Bruce Jacobson,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. E8–10992 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–86–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9:30 a.m., on Friday, July 25, 2008, at the Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

DATES: Friday, July 25, 2008.

ADDRESSES: Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Hagerstown, Maryland 21740.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. James G. McCleaf II
Mr. John A. Ziegler
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Brother James Kirkpatrick
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath
Ms. Patricia Schooley
Mr. Jack Reeder
Ms. Merrily Pierce

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction/development projects.
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: April 23, 2008.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal, National Historical Park.

[FR Doc. E8–10989 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–6V–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, and part 65 of title 36 of the Code of Federal Regulations, that the National Park System Advisory Board will meet July 21–22, 2008, in Washington, DC. The Board will have an orientation session on the morning of July 21, and in the afternoon tour park sites in the National Capital Region. On July 22, the Board will convene its business meeting from 8:30 a.m., to 5 p.m.

DATES: July 21–22, 2008. *Location:* American Geophysical Union (AGU), Meeting Room A, 2000 Florida Avenue, NW., Washington, DC 20009–1277; 202–462–6900.

FOR FURTHER INFORMATION CONTACT: (a) For information concerning the National Park System Advisory Board or to request to address the Board, contact Ms. Jennifer Lee, Office of the Director, National Park Service, 1849 C Street, NW., Room 2023, Washington, DC 20240; telephone 202–219–1689. (b) To submit a written statement specific to, or request information about, any National Historic Landmarks matter listed below, or for information about the National Historic Landmarks Program or National Historic Landmarks designation process and the effects of designation, contact J. Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, 1849 C Street, NW. (2280), Washington, DC 20240; e-mail *Paul_Loether@nps.gov*.

SUPPLEMENTARY INFORMATION: On July 21, the Board will convene from 8:30 a.m. to 2:30 p.m., for an orientation session for Board members, followed by a tour of national park sites of the National Capital Region. The Board will convene its business meeting on July 22 at 8:30 a.m. and adjourn at 5 p.m. During the course of the two days, the Board will be addressed by Secretary of the Interior Dirk Kempthorne and National Park Service Director Mary Bomar, and will be briefed by park officials regarding environmental, education, and partnership programs. The Board will receive status reports on matters pending before the Board, including health and recreation, education, national historic landmarks, and science. Other officials of the Department of the Interior and the National Park Service may address the Board, and other miscellaneous topics and reports may be covered.

National Historic Landmarks Program matters will be considered in the morning session of the business meeting, during which the Board may consider the following:

(A) Nominations

California

- The Forty Acres, Delano, CA.

Florida

- Freedom Tower, Miami, FL.

Georgia

- Woodrow Wilson Boyhood Home, Augusta, GA.

Louisiana

• Shreveport Municipal Memorial Auditorium, Shreveport, LA.

Massachusetts

• Alden, John And Priscilla, Family Sites, Duxbury, MA.

Mississippi

• Lyceum—The Circle Historic District, Oxford, MS.

Montana

• Rosebud Battlefield/Where the Girl Saved Her Brother, Big Horn County, MT.
• Wolf Mountains Battlefield/Where Big Crow Walked Back and Forth, Rosebud County, MT.

New York

• Aaron Copland House, Cortlandt Manor, NY.
• Camp Uncas, Hamilton County, NY.
• First Reformed Protestant Dutch Church Of Kingston, Kingston, NY.
• The Frick Collection and Art Reference Library Building, New York, NY.
• Solomon R. Guggenheim Museum, New York, NY.

Pennsylvania

• Bryn Athyn Historic District, Bryn Athyn, PA.
• The College of Physicians of Philadelphia Building, Philadelphia, PA.

Virginia

• Skyline Drive, Shenandoah National Park, VA.

Washington

• B Reactor, Benton County, WA.

(B) Proposed Amendments to Existing Designations

• Coltsville Historic District, Hartford, CT (name change, boundary revision and additional documentation).
• Newport Historic District, Newport, RI (boundary revision and updated documentation).
• Skidmore/Old Town Historic District, Portland, OR (updated documentation).

The Board meeting will be open to the public. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also will permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: May 12, 2008.

Bernard Fagan,

Deputy Chief, Office of Policy.

[FR Doc. E8–10988 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0091 and 1029–0118

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for the titles described below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost for 30 CFR parts 750 and 842.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 16, 2008, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to *jtrelease@osmre.gov.*

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202 - SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted two requests to OMB to renew its approval of the collections of information contained in 30 CFR part 750, Requirements for surface coal mining and reclamation operations on Indian Lands; and 30 CFR part 842, Federal inspections and monitoring. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are 1029–0091 for part 750, and 1029–0118 for part 842.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments for these collections of information was published on February 1, 2008 (73 FR 6203). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Requirements for surface coal mining and reclamation operations on Indian Lands—30 CFR part 750.

OMB Control Number: 1029–0091.

Summary: Surface coal mining permit applicants who conduct or propose to conduct surface coal mining and reclamation operations on Indian lands must comply with the requirements of 30 CFR 750 pursuant to section 710 of SMCRA. Applicants are required to respondent to obtain a benefit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coal mining permits.

Total Annual Responses: One new permit/significant revision annually.

Total Annual Burden Hours: 1,300 hours annually.

Total Annual Non-wage Costs: $15,000 for filings fees for each new permits/significant revision.

Title: 30 CFR part 842—Federal inspections and monitoring.

OMB Control Number: 1029–0118.

Summary: For purposes of information collection, this part establishes the procedures for any person to notify the Office of Surface Mining in writing of any violation that may exist at a surface coal mining operation. The information will be used

to investigate potential violations of the Act or applicable State regulations. Response is required to request an inspection.

Bureau Form: How to request a state or federal inspection of a coal mine (no form number).

Frequency of Collection: Once.

Description of Respondents: Citizens and State regulatory authorities.

Total Annual Responses: 44.

Total Annual Burden Hours: 451.

Total Annual Non-wage Costs: $0.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES**. Please refer to the appropriate OMB control numbers in your correspondence.

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

Dated: May 8, 2008.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E8–10641 Filed 5–15–08; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1146–1147 (Preliminary)]

1-Hydroxyethylidene-1,1-Diphosphonic Acid (HEDP) From China and India

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and India of 1-Hydroxyethylidene-1, 1-diphosphonic acid (HEDP), provided for in subheading 2931.00 of the armonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 19, 2008, a petition was filed with the Commission and Commerce by Compass Chemical International LLC, Huntsville, TX, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 1-hydroxyethylidene-1,1-diphosphonic acid from China and India. Accordingly, effective March 19, 2008, the Commission instituted antidumping duty investigation Nos. 731–TA–1146–1147 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 26, 2008 (73 FR 16058). The conference was held in Washington, DC, on April 9, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 5, 2008. The views of the Commission are contained in USITC Publication 3998 (May 2008), entitled *1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from China and India:* Investigation Nos. 731–TA–1146–1147 (Preliminary).

By order of the Commission.

Issued: May 12, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–10966 Filed 5–15–08; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1148 (Preliminary)]

Frontseating Service Valves From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of frontseating service valves that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation concerning frontseating service valves from China. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in this investigation under sections 735(a) of

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On March 19, 2008, a petition was filed with the Commission and Commerce by Parker-Hannifin Corp., Cleveland, OH, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of frontseating service valves from China. Accordingly, effective March 19, 2008, the Commission instituted antidumping duty investigation No. 731–TA–1148 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 26, 2008 (73 FR 16059). The conference was held in Washington, DC, on April 8, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 5, 2008. The views of the Commission are contained in USITC Publication 3999 (May 2008), entitled *Frontseating Service Valves from China: Investigation No. 731–TA–1148 (Preliminary).*

By order of the Commission.

Issued: May 12, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–10967 Filed 5–15–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on April 14, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Kennan Yilmaz individual member), Redmond, WA; Genesis Technology, Hyogo, Japan; and Toshiba Corp. Semiconductor Co. Semiconductor Sys. Engineering Ctr., Kawasaki, Japan have withdrawn as parties to this venture. Also, the following members have changed their names: Octavian Scientific to Advanced Inquiry Systems, Inc., Hillsboro, OR; and Fujitsu Ltd. to Fujitsu Microelectronics Ltd., Tokyo, Japan.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2003 (68 FR 35913).

The last notification was filed with the Department on January 28, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 28, 2008 (73 FR 10807).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–10843 Filed 5–15–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—OpenSAF Foundation

Notice is hereby given that, on April 8, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. *et seq.* (''the Act''), OpenSAF Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Wind River Systems, Alameda, CA; Hewlett-Packard Company, Palo Alto, CA; Emerson Network Power Embedded Computing, Tempe, AZ; Sun Microsystems, Inc., Santa Clara, CA; Ericsson AB, Alvsjo, Sweden; and Nokia Siemens Networks, Espoo, Finland. The general area of OpenSAF Foundation's planned activity are to enable and facilitate the creation of high availability vendor-neutral open source software tools (the ''Foundation Software'') generally consistent with SA Forum specifications and to disseminate, promote and encourage the use of the Foundation Software worldwide to ensure broad adoption. OpenSAF Foundation will pursue these purposes through additional activities such as providing for testing and conformity assessment of Foundation Software; the creation and ownership of distinctive trademarks; and the operation of a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products incorporating or interoperable with Foundation Software and/or Specifications. OpenSAF Foundation may also create specifications where they are not available from other sources and undertake those other activities which its Board may from time to time approve in connection with the foregoing.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–10842 Filed 5–15–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Sixty Days' Public Comment; O*NET Data Collection Program, Extension of Currently Approved Collection Without Change

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: 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/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the O*NET (Occupational Information Network) Data Collection Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 15, 2008.

ADDRESSES: Submit written comments to the Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210, Attention: Pam Frugoli, Telephone number: 202–693–3643 (this is not a toll-free number). Fax: 202–693–3015. E-mail: *O*NET@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The O*NET Data Collection Program is a continuing effort to collect and maintain current information on detailed characteristics of occupations and skills for over 800 occupations. The resulting database is and will continue to be the most comprehensive standard source of occupational and skills information in the nation. O*NET information is used by a wide range of audiences, from individuals making career decisions, to public agencies and schools providing career exploration services and planning workforce investment programs, to businesses making staffing and training decisions. The O*NET system provides a common language, framework and database to meet the administrative needs of various federal programs, including workforce investment and training programs of the Departments of Labor, Education, and Health and Human Services.

Section 309 of the Workforce Investment Act requires the Secretary of Labor to oversee the ''development, maintenance, and continuous improvement of a nationwide employment statistics system'' which shall include, among other components, ''skill trends by occupation and industry.'' The States are to develop similar statewide employment statistics systems.

The O*NET Data Collection Program is the primary vehicle for collecting skills and occupational information across all occupations nationwide. The continued population and completion of the entire O*NET database is a critical component of the nationwide labor market information system to support employer, workforce, and education information needs.

O*NET succeeds the Dictionary of Occupational Titles (DOT) and is a powerful tool for various critical federal and state workforce investment functions. O*NET integrates a powerful relational database and a common language for occupational and skill descriptions into a value-added tool for business, job seekers, and the workforce investment professionals who help bring them together. By providing information organized according to the O*NET Content Model, the O*NET database is an important tool for keeping up with today's rapidly changing world of work. The O*NET database provides:

- Detailed information for more than 800 occupations.
- Descriptive information on standardized descriptors of skills, abilities, interests, knowledge, work values, education, training, work context, and work activities.
- Occupational coding based on the 2000 Standard Occupational Classification (SOC).

The O*NET electronic database serves as the underpinning for hundreds of publicly and privately developed products and resources in the marketplace and can be found at *http://www.onetcenter.org/database.html*. These products and resources are being used to serve millions of customers.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: O*NET Data Collection Program.

OMB Number: 1205–0421.

Affected Public: Business/Employers (includes private and not-for-profit businesses and government); individuals (incumbent workers, subject-matter experts).

Form: O*NET Data Collection Program.

Total Respondents: 85,780.

Frequency: Annual.

Total Responses: 85,780.

Average Time Per Response: Employer response time is 70 minutes. Incumbent worker response time is 30 minutes. Subject-matter expert response time is 2 hours.

Estimated Total Burden Hours: 43,857.

Total Burden Cost: $1,355,266.

Comments submitted in response to this comment request will be summarized and/or included in the request for the Office of Management and Budget approval of the information collection request. They will also become a matter of public record.

Signed: At Washington, DC, this 8th day of May, 2008.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment & Training Administration.

[FR Doc. E8–10934 Filed 5–15–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) To Fund Demonstration Projects Targeting Dislocated Workers

Announcement type: New, Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY–07–10.

Catalog of Federal Assistance Number: 17.269.

Key Dates: The closing date for receipt of applications under this announcement is June 13, 2008. Applications must be received at the address below no later than 4:30 p.m. (Eastern Time). Application and submission information is explained in detail in Part IV of this SGA.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces the availability of approximately $20 million to fund grants to State Workforce Agencies (SWAs) for demonstration projects targeting Workforce Investment Act (WIA) dislocated workers. This solicitation provides SWAs with the option to choose from four categories under which applicants can submit a single grant application. Please note that two options exist under category one and two options exist under category three. If the applicant chooses to apply under categories one or three, the applicant must indicate which option the proposal addresses. Applicants may only submit a grant application under *one* category and only *one* application per SWA will be accepted. Applicants must indicate in the abstract of their proposal the category under which they are applying.

Category 1—Entrepreneurship Opportunities for Dislocated Workers (two options).

Category 2—Getting Ahead of the Curve: Raising Educational/Skill Levels of Workers in Declining Industries.

Category 3—Innovative Adult Learning Models for Dislocated Workers (two options).

Category 4—Preventing Dislocations of TANF Recipients Moving Into Entry Level Jobs Subject to Economic Churn.

Additional background information is provided under Part I.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: BJai Johnson, Reference SGA/DFA PY–07–10, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Facsimile applications will not be accepted. Information about applying online can be found in Part V.C. of this document. Applicants are advised that mail delivery in the Washington, DC, area may be delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

SUPPLEMENTARY INFORMATION: *This solicitation consists of eight parts:*

Part I provides background information for each category.
Part II describes award information.
Part III describes eligibility information.
Part IV describes the application and submission process.
Part V describes the applications review process.
Part VI contains award administration information.
Part VII contains DOL agency contact information.
Part VIII lists additional resources of interest to applicants.

Part I. Background Information

This section provides background information for each of the four categories for grant applications. In some cases the background information is applicable to more than one category and is identified as such.

Background Information for Category 1—Entrepreneurship Opportunities for Dislocated Workers: *Applicants may submit an application under only one of the following options:* Option A—Project GATE (Growing America Through Entrepreneurship) for Dislocated Workers in Rural Areas or Option B—Project GATE for Dislocated Workers Fifty Years and Older. This background information is relevant to both options.

Although many Americans have neither the skills nor the desire to be self-employed (more than 90 percent of employed Americans work for other people in ''wage and salary'' jobs) some Americans do want to be self-employed. Some have a passion for a particular business idea, while others want to be their own bosses, have no access to wage and salary jobs in which they can use their skills, or desire the flexibility of self-employment. These people often are willing to work hard, and have specific skills, interests, and talents they can use in a business.

Many aspiring entrepreneurs' lack of business knowledge and access to credit poses significant barriers to self-employment. This lack of knowledge may encompass marketing, finance, regulations, how to develop a business plan, or other aspects of developing and running a business. Disadvantaged populations in particular are less likely to have access to the information sources that would make such knowledge and skills available to them. Many people may need loans to start their businesses but have little collateral and poor or no credit histories. Moreover, commercial banks frequently are reluctant to make loans to small, risky ventures.

In providing assistance designed to surmount these obstacles to self-employment, Project GATE aims to promote both workforce and economic development. In improving the likelihood of being successful at self-employment, the project sought to increase employment, earnings, and the self-sufficiency of GATE participants. Even if not successful at self-employment, the program could have improved success at wage and salary employment by providing GATE participants with contacts, business skills, or just the knowledge that entrepreneurship is not for them. By promoting small businesses and the jobs they create, Project GATE also aimed to promote economic development in some low-income areas.

1. Project GATE Demonstration

This initiative builds on the prior Project GATE Demonstration funded by ETA which began in early fall 2003 and was implemented in three states-Pennsylvania, Minnesota, and Maine. Participants in Project GATE were offered assessments, classroom training and one-on-one business counseling in developing their businesses and applying for a Small Business Administration (SBA) Microloan or other source of business finance. Nonprofit Community-Based Organizations and the SBA's Small Business Development Centers provided the classroom training and business counseling.

One-Stop Career Centers were the gateways to the program. These centers conducted outreach for Project GATE and hosted the program's orientation session. Project GATE added a new service to the One-Stop Career Centers' arsenal of employment services—helping people become self-employed. In addition, Project GATE attracted new

and diverse customers to the participating One-Stop Career Centers.

The Project GATE demonstration also provided technical assistance to grantees to implement the project. In addition, the Project GATE demonstration was also evaluated to determine whether the project works and whether it could be replicated on a broader scale. Below is a summary of the findings from the first 18 months of the Project GATE demonstration, which have led ETA to announce a new round of Project GATE grants.

Self-employment service programs can be offered at One-Stop Career Centers. During the demonstration, Project GATE was implemented successfully across a wide variety of sites. While One-Stop Career Centers are not traditionally known as places to go for self-employment services, Project GATE was able, with some marketing, to draw entrepreneurs and prospective entrepreneurs into the centers. As long as local training and business counseling providers with a reputation for providing good quality services are willing to participate in the program, Project GATE, or a similar program, could be offered as an additional service at One-Stop Career Centers.

The Project GATE service model appears to have several advantages over the existing self-employment services available within participating communities. In addition to receiving more hours of self-employment services, Project GATE participants reported higher levels of satisfaction with the services received than did control group members. Offering a one-on-one assessment with a trained business counselor and a choice of quality local service providers appears to have added value to the existing service network within the local communities.

GATE participants started businesses at a higher rate than control group members. Over the 18-month follow up period, participation in Project GATE led to an increase in business ownership. While the increase in business ownership was statistically significant, the magnitude of the impact was relatively modest-six percentage points. It is important to note, however, that an analysis of the impact of Project GATE on the unemployed found more substantial program impacts for this subgroup.

Project GATE had larger impacts on business ownership among Unemployment Insurance (UI) recipients. Over the entire follow-up period, the impact of Project GATE on business ownership among UI recipients was nine percentage points (statistically significant), compared with no impact on those who did not receive UI. Project GATE may have had a larger impact on those who were receiving UI benefits when they applied because they had fewer alternative opportunities in the regular labor market. Moreover, not having a wage and salary job provided them with more time to work on their businesses, while the UI benefits provided a regular income.

Project GATE had much larger impacts on business ownership among recent UI recipients in Minnesota, where job search requirements were waived for GATE program group members. For the recent UI recipients in Minnesota, the impact of Project GATE on business ownership started at +12 percentage points in the first quarter of the follow-up period and increased to +15 percentage points in the last quarter, all statistically significant. One reason for larger impacts among recent UI recipients in Minnesota may be attributable to the fact that the job search requirements that accompany the receipt of UI were waived for GATE participants which allowed them to continue receiving benefits while concentrating on their businesses, rather than looking for a wage and salary job

Finally, Project GATE is a successful entrepreneurial training model in rural areas. Rural areas in the demonstration were especially innovative in providing access to training and business counseling to entrepreneurs. For more information on Project GATE, please visit the following weblink: *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_resultDetails&pub_id=2337&mp=y.*

2. Necessary Project Components

The new Project GATE grantees would follow the service delivery strategy employed by the successful Project GATE Demonstration. Intake for the grants would involve three steps: (1) Registration, (2) orientation, and (3) completion of an application package. These are described in detail below.

- *Registration.* Persons interested in applying for training under the grant must first signal their interest in the program by registration. This would be done at a participating One-Stop Career Center, at the GATE Web site, by mailing a postcard, or by calling a toll-free number. Registered individuals will be notified by mail of the times and locations of the GATE orientations in their areas. The Project GATE Web site will be reactivated for the purposes of the grants. Other outreach materials developed for the GATE demonstration will be adapted for use under the grants. Registrants will be asked to contact a One-Stop Career Center to select which orientation they plan to attend.
- *Orientation.* The GATE orientation has four main objectives. First, it aims to provide the attendees with a balanced picture of both the positive and negative aspects of self-employment. Second, the orientation describes GATE services so that applicants have realistic expectations about services provided and do not expect to become eligible for grants or loans directly from GATE. Third, the orientation describes the services provided by the One-Stop Career Center. Finally, One-Stop Career Center staff members describe the GATE application process and offer each attendee an application package.
- *Application Package.* Orientation attendees will be given an application package. The application collects information for the evaluation. It also is used to check on eligibility for Project GATE and to provide the assessment counselor (see below) with some information about the participant's needs. The applicant will be required to send the application package to the evaluation contractor. Forms that are less than 90 percent complete will be returned to the applicant for completion.

3. Necessary Project Services

Each Project GATE grantee must offer at minimum three basic services: (1) An assessment, (2) classroom training, and (3) one-on-one business counseling. All Project GATE grant participants must receive an assessment. After the assessment, participants may receive classroom training only, business counseling only, or both.

- *Assessment.* Soon after being accepted into the project, each participant should meet with a GATE assessment counselor. The GATE counselor is generally a member of a local economic development entity such as a chamber of commerce or small business development center. The main objective of the assessment is to recommend the services and providers that best meet the participant's needs. On the basis of this review, the counselor recommends the appropriate set of services to the participant and refers them to a training or business counseling provider.
- *Training.* The training courses offered will vary by provider. Many providers offer multiple training courses. At minimum, service providers must offer basic courses for those just starting businesses that focus on developing a business plan. Topics covered in these basic courses may also include: Market research, marketing, pricing, financing, cash flow,

accounting, hiring, permits and licenses, and legal issues. Other courses should target participants who already have developed business plans and may have started their businesses, but need assistance in growing the business. These more advanced courses may cover topics such as growth strategies, business planning, and customer relations. In addition to training courses, some providers also may offer seminars on specific business types (*e.g.*, child-care businesses), e-commerce, or accounting software packages.

• *Business Counseling.* All Project GATE grant participants may meet one-on-one with a business counselor to receive assistance with their specific businesses or business ideas. The amount of business counseling received should be tailored to the needs of the participants. Suggested topics to be covered in business counseling sessions may include refinement of the business idea, business plan writing and development, marketing, budget and cash flow projections, and availability of financing. For those in need of financing for their businesses, the counselors may provide assistance in applying for loans from the SBA or other funding sources. Individual business counseling is an important and effective strategy for assisting entrepreneurs with their business needs. Existing small business owners who do not need classroom training often use one-on-one business counseling to work through specific business issues. Individuals at the business start-up phase often use technical assistance to help work through specific issues after completing classroom training. Not only do these sessions provide practical advice on business-related issues, but they also allow counselors the opportunity to provide emotional support and encouragement when participants face difficulties in the business development process.

Background Information for Category 2—Getting Ahead of the Curve: Raising Educational/Skill Levels of Workers in Declining Industries: Today's global economy is marked by tremendous advancements in communication, travel, and trade—allowing individuals instant access to commerce from almost anywhere in the world. At the same time, American businesses find themselves competing not only with companies across the street, but also with companies around the globe. As a result, many companies are streamlining or reinventing their operations. Long-term employees in these companies find themselves at a disadvantage because of outdated skills. Because of their skill deficit, they face dislocation not only in the face of plant closures or relocations but in the case of reinvention, where companies and industries must modify their core competency and skill requirements to remain competitive in the global marketplace.

The roots of the workforce investment system were designed to meet the needs of a different economy than we are in today. The system was designed for an economy characterized by interchangeable labor, cyclical layoffs, and employers that, for the most part, required a workforce with no more than a high school diploma from workers. In the 21st century globally competitive economy, it is becoming increasingly important that the workforce investment system act as a strategic partner in regional economic and talent development. A critical part of talent development that helps create a competitive advantage for a region is to develop innovative strategies to assist businesses in layoff aversion by raising the education and skill levels of workers in declining or at-risk industries, or industries that are transforming. This requires strategic partnerships with employers, education and training providers at all levels, including apprenticeship providers, economic development entities, local, regional, and state governments, the philanthropic community, faith-based and community organizations, research institutions, and other civic leaders with a stake in economic growth and talent development.

1. Getting Ahead of the Curve Demonstration

Under this category, the strategies employed to upgrade workers skills should be designed to (a) meet employers' critical skill needs, enhancing employers' ability to avoid layoffs; and/or (b) provide workers with updated transferable skills to enhance their ability to transition to other occupations and/or careers. Solutions should examine the concept of career lattices based on competencies. The objective is to enhance the value of workers to their current employer and to raise their education and skill levels to position them to quickly move into new jobs, either within or outside their current employer/industry if their current jobs are eliminated.

2. Necessary Project Components

Applications under this category must consist of the following two components: (1) Development of an ''early warning system'' for tracking declining industries/businesses. The early warning system can involve coordination and evaluation of current activities as well as creation of new activities. (2) Engagement with businesses in declining industries, such as traditional manufacturing, or transforming industries that require new skill sets, such as information technology and advanced manufacturing, to collaboratively develop strategies to raise the education and skill levels of the current workforce. This may be focused on either lay-off aversion or to position workers to advance in their current careers, while increasing worker productivity, but it also supports their potential need to transition to other occupations if employment in the industry or business is no longer viable. It is ETA's expectation that workers will receive training as part of grant activities.

Early Warning System and engagement with businesses in at-risk industries to provide training: In 1988, Congress passed the Worker Adjustment and Retraining Notification (WARN) Act to provide workers with sufficient time to prepare for the transition between the jobs they currently hold and new jobs. The WARN Act requires employers to provide written notice at least 60 calendar days in advance of covered plant closings and mass layoffs. Once receiving a WARN notice, state and local workforce agencies engage the employer and its employees in rapid response activities. Additionally, many states have created their own regulations around advanced notices that place further restrictions on employers. These models, while valuable, represent a more reactive approach to assisting both employers and workers and are also limited in their coverage. In today's global economy, rapid response and other actions targeting individuals at risk for dislocation need to be proactive rather than reactive. In fact, proactive strategies targeting businesses at-risk for closure or realignment and employees at-risk for dislocation are a vital part of retaining competitive advantage in a regional economic and talent development framework.

Some state and local workforce agencies are working with employers and other state agencies to create ''early warning'' systems. These systems track companies and industries that are likely to experience closures, move to another location/state, experience layoffs, or face industry transformation that requires a substantive change in skill requirements. This demonstration intends to support the development and implementation of replicable models for early warning systems. Using the early warning systems, the workforce

investment system and its partners should work together to provide workers at risk for layoff with training to upgrade their skills.

3. Early Warning System Requirements

Early warning enables the workforce investment system and its economic development, education, and other partners to strategically deploy regional assets to support industry transformation and up-skill or re-skill the workforce to ensure successful transitions into new occupations and industries. Early warning systems will vary based on the needs in each state and region, however they should include at a minimum:

- Strong collaboration with state Labor Market Information departments to understand how and where the state and regional economy is transitioning and how to identify declining industries and companies.
- Partnerships between the workforce investment system at the state and local levels, governmental and non-governmental economic development agencies at the state and local levels, educational entities at all levels, businesses, industry associations, and outplacement firms. Additionally, optional partners include philanthropic organizations, faith and community-based organizations, governmental and non-governmental education agencies, and labor management organizations if applicable.
- Aligning the resources and activities of different federal, state, and local governments. For example rapid response, Regional Innovation Grants, Trade Act funding (including the Trade Adjustment Assistance for Firms program operated under the Department of Commerce's Economic Development Administration (EDA)), state and local WIA dislocated worker funds, federal, state, and local economic development resources (such as EDA grants), and any other federal and state resources that align with the goals of serving dislocated workers.
- Leveraging resources from governmental and non-governmental partners.
- Outreach and education strategies to business and industry about benefits of collaboration.
- Creation of a replication model to be disseminated to other workforce agencies.
- A plan for sustainability beyond the life of the grant.

It is expected that by the end of year one of the grant, the grantee will have established an early warning system and that the grantee will constantly assess and evaluate the effectiveness of their model and make changes as needed.

4. Business Engagement Strategies and Training Requirement

A regional economy's competitiveness depends on the skills of its workers. According to the Bureau of Labor Statistics, Americans now average 14 jobs between the ages of 18 and 34—or approximately one new job every 14 months. This statistic demonstrates the need for a flexible workforce that receives competency-based training as part of a lifelong learning strategy. Workers with outdated skills in declining industries represent untapped potential that can be difficult to reach. The purpose of this component is to support the development of partnerships and business engagement strategies that ultimately result in these workers receiving competency-based training to allow them to quickly adapt to changes in their current occupation or industry or move to new industries should their current environment no longer present viable career options. ETA's goal is not only to enhance the value of workers in their current jobs but also to position them to move into new jobs quickly if their current jobs are eliminated.

Declining industries are not defined in this solicitation but ETA intends them to be those traditional industries that have been in decline for the past decade, such as traditional manufacturing, textiles, furniture production, tobacco, etc. Transforming industries are also not strictly defined but are intended to be those facing significant changes in the skill requirements of their occupations and career ladders due to shifts in the industry requirements, such as information technology and advanced manufacturing. Applicants who make a persuasive case that a non-traditional industry is in decline or transforming in their area will also be considered.

Business engagement strategies will vary based on the needs of the state and applicants are encouraged to be innovative in their proposed activities. Applicants' business engagement strategies and subsequent training strategies may focus on outreach to affected businesses and industries, lay-off aversion, increasing worker productivity, and/or positioning workers to advance in their current careers. However, training must also support workers' potential need to transition to other occupations if the industry or business is no longer viable.

ETA intends grants to include a planning period of up to one year to identify declining, at-risk, or transforming industries, build business and education partnerships, and understand training strategies that will respond to the needs of employers and workers in the context of the regional economy. Years two and three are intended to serve as the implementation period, when the workforce investment system will use the early warning system to identify specific employers, identify or design appropriate incumbent-worker training programs, and deliver training to workers at risk for layoff.

The one-year planning period should include, at a minimum, the following elements:

- Partnership with economic development organizations, business and industry, and education and training providers to create a consensus about skills gaps between the skills of the industry or industries in decline and growth sectors and the skills that are needed in the 21st century industry competencies. This may include development and administration of assessments, surveys of employers and industry associations, identification of requirements in current industry certifications, and a mapping of the existing skills areas against those that are needed.
- Partnership with the One-Stop Career Center system and its partners and faith and community-based organizations to examine support options to support participant success in education and training programs.
- Connection to ongoing activities with similar goals, such as Regional Innovation Grants, Base Realignment and Closure activities, Workforce Innovation in Regional Economic Development Grants, and other federal, state or local efforts that have begun planning or are implementing activities in the area.
- Identification of existing education and training models, remediation models, competency-based models, career ladders, curricula, and other materials.
- Identification of, or where necessary development of, curricula, competency-based models, career ladders, and other materials to support training.
- Creation of a sustainability plan to continue engagement with at-risk businesses after the grant ends.

The implementation period should be a minimum of two years and it may overlap with the planning period. The implementation phase should incorporate the information gathered through the Early Warning System created in year one of the grant. The

implementation period should include, at a minimum, the following elements:

- Partnerships with education and training providers to provide the necessary education and training to individuals at risk for dislocation including work readiness; remediation; science, technology, engineering and math (STEM); and other industry required competencies and curricula.
- Leveraging financial and non-financial resources to support training, including existing curricula, space, equipment, faculty, and other resources.
- Outcomes appropriate to the nature of the solution, including the number of businesses impacted, the return of investment to the business, the number of individuals who receive services, the number of individuals who receive training, the number of individuals who complete training, the number of credentials awarded, ETA's common measures (entered employment, employment retention, average earnings), wage gains, promotions, and other outcomes determined important by the applicant. Outcomes for each grantee will be negotiated following grant award based on the information contained in their grant agreement and the needs of ETA's independent evaluation of the demonstration if applicable.
- Creation of a replication model to be disseminated to other workforce agencies.

Background Information for Category 3—Innovative Adult Learning Models for Dislocated Workers: Applicants may only submit an application under one of the following options: Option A—Innovative Adult Learning Strategies or Option B—Innovative Earn/Learn Models Using Apprenticeship. This background information is relevant to both options.

More than three million jobs have been lost between 1998 and 2003, with 2.7 million lost since the immediate pre-recession year of 2000. Manufacturing job losses have primarily been in traditional sectors such as automotive and textiles, and now with the economic slowdown, layoffs are projected in finance, construction and other industries. Many of these are jobs that will likely not come back. The 21st century economy demands a workforce with postsecondary education credentials, and the adaptability to respond immediately to changing economic and business needs. Innovative approaches need to be tried to retrain and retool dislocated workers for high-demand jobs in industries that will be here for the long term and can provide wages comparable to what they have been earning such as Information Technology, Healthcare, Biotechnology, Advanced Manufacturing, Energy and others.

The public workforce investment system plays a leadership role in meeting these demands by catalyzing the implementation of innovative talent development and lifelong learning strategies that will enable American workers to advance their skills and remain competitive in the global economy.

1. Innovative Adult Learning Models Demonstration

This demonstration is focused on creating new or identifying existing innovative strategies for educating and training dislocated workers. *These strategies must address the issues commonly faced by dislocated workers including:* (1) The need to earn income while in training, (2) the need for basic skills remediation, particularly for STEM[1] areas and literacy, to achieve skill levels required for education and training programs, (3) difficulty learning in traditional education formats, (4) accelerated learning options to shorten the time of skills upgrading. Applicants may only submit an application under one of the following options: Option A—Innovative Adult Learning Strategies or Option B—Innovative Earn/Learn Models Using Apprenticeship. Applicants may only submit an application under one option.

Option A—Innovative Adult Learning Strategies (Including, But Not Limited to Earn/Learn)

A.1. Adult Learning Strategies Demonstration

Under this option, projects will focus on identifying successful adult learning education and training models and implementing a demonstration of the model or models in a state, region, or local area targeting adult dislocated workers. Projects will adapt the education and training model, which may have been developed for adult populations in specific target populations, and demonstrate the viability of the model in helping workers learn new skills at a faster and more in-depth rate while allowing the ability to earn income.

Education and training must focus on state, regional, or local high-growth, high-demand industries. This demonstration will require strong partnerships among State Workforce Agencies, state and local workforce investment boards, One-Stop Career Centers, businesses (existing or new partners), education and training providers including community colleges, adult and vocational education providers, 4-year universities, other training providers, and community or faith based organizations.

A.2. Necessary Project Components

Applicants will identify innovative adult learning strategies and models that address the needs dislocated workers have for: accelerated time to credential, blended learning strategies, remediation in foundational academics, different learning environments, and accessing learning on different schedules and using different modalities. These models may *not* include apprenticeship components, but may include on-the-job training. Applicants will select a least one model to be adapted for their demonstration. Each applicant must determine what high-growth, high-demand industries are driving their economy and where there are job and skill shortages. This should be done in collaboration with state Labor Market Information agencies, economic development agencies, business and industry partners, and education and training providers. This model will require a formal partnership between the applicant SWA and at least one entity from each of the following: local workforce investment board/One-Stop Career Center; an education or training provider, and an individual business or industry association. Multiple partners in these categories are not required but are strongly encouraged. Economic development organizations and faith and community-based organizations are not required but are also strongly encouraged. The SWA, in conjunction with its local workforce investment board(s) will oversee the design and operation of this demonstration.

It is expected that the demonstration will accomplish a seamless transition for dislocated workers who will be retrained under the innovative adult learning strategy or model for jobs in high-growth and high-demand industries. Using leveraged resources, incentives may be provided to dislocated workers including, but not limited to, wrap around supportive services including stipends. However, it is not ETA's intent to have grant funds used in the provision of supportive services under this component.

A.3. Project Requirements

The Innovative Adult Learning Strategies Demonstration is not intended to fund the creation of entirely new training models. Rather, projects should be innovative in how they adapt existing models to the adult dislocated

[1] Science, Technology, Engineering and Mathematics.

worker population and be tailored to the specific needs of workers in their region. *Applications must include, but are not limited, to the following elements:*

- A demonstration of need in the area of the demonstration, including identification of: the dislocated worker pool, the high-growth, high-demand industries in the area, the occupations on which to focus retraining efforts, the skills and competencies required in those occupations, and the assets the currently exist for the project to leverage.
- A description of the roles of current and future partners in the grant and the leveraged resources they will bring to the table.
- A description of how the innovative training model was identified and selected to be adapted for demonstration. A discussion of the ways in which the model will need to be adapted to meet the education and training needs of the targeted dislocated workers including the need to earn while they learn, an accelerated timeline, remediation, and different learning schedules and modalities. Additionally, applicants should describe anticipated skill assessments and mapping to high growth, high demand industries.
- A description of the projected number of individuals to be trained under the grants and the expected outcomes including ETA's common measures (entered employment, employment retention, and average earnings), the number of credentials awarded, and other outcomes determined important by the applicant. Specific outcomes for each grantee will be negotiated following grant award based on the information contained in their grant agreement and the needs of ETA's independent evaluation of the demonstration if applicable.
- A commitment to documenting the training model in such a way that the model can be disseminated to other workforce agencies.

Option B—Innovative Earn/Learn Model Using Apprenticeship

B.1. Earn/Learn Using Apprenticeship Demonstration

This option focuses on demonstrating innovative and fresh approaches in retraining and re-skilling adult learners and dislocated workers through Registered Apprenticeship in high-demand industries. Projects must demonstrate the viability of the model in helping adult workers learn new skills at a faster and more in-depth rate for high growth industries such as advanced manufacturing, biotechnology, energy, health care, and information technology.

This demonstration will require strong partnerships among WIA state agencies, Workforce Investment Boards, One-Stop Career Centers, businesses (existing or potential apprenticeship sponsors), labor organizations, industry, education/training providers, Registered Apprenticeship offices (the federal Office of Apprenticeship or a State Apprenticeship Agency) and any other appropriate federal or state offices or other entities with resources that can be leveraged to make the project a success. The strategy may be incorporated into regional economic development goals to build a globally competitive and prepared workforce.

A goal of this option is to develop and register new apprenticeship programs to serve dislocated workers and adult learners. Registered Apprenticeship is a critical postsecondary education, training, and employment option available in every state in the country, and is an important component of talent development strategies. The model is an excellent option for dislocated workers and others who are transitioning from declining industries to new occupations because it provides immediate employment for apprentices.

Registered Apprenticeship is a national training system that combines paid learning on-the-job and related technical and theoretical instruction in a skilled occupation with guaranteed wage structures. As an ''earn-while-you-learn'' model, Registered Apprenticeship is particularly attractive for dislocated workers with families and financial obligations who must have a paycheck while they gain additional education or workforce skills while transitioning to a new career. Most dislocated workers may not be able to go to school full time without benefit of a job. Registered Apprenticeships provide access to education and training that may not otherwise be accessible to many adults. Additionally, regions that adopt robust Registered Apprenticeship programs in the context of economic development strategies create seamless pipelines of skilled workers and flexible career pathways to meet current and future workforce demands.

Upon completion of the apprenticeship, apprentices earn certificates that are recognized nationwide as portable industry credentials. Many apprenticeship programs–particularly in high-growth industries such as health care, advanced manufacturing and transportation—also offer interim credentials and training certificates based on a competency model that leads to a Certificate of Completion. There may be beginning, intermediate, advanced, and specialty certification levels. Registered Apprenticeship programs also allow credit for previous apprenticeship-related experience.

Registered Apprenticeship is a highly versatile training strategy that aligns with and advances the goals of key workforce investment system initiatives. By coordinating and collaborating with the knowledgeable professionals that make up the Registered Apprenticeship system, the workforce system can increase the quality of its services to both its employer and worker customers and enhance activities in support of current workforce system priorities.

B.2. Necessary Project Components

Applicants will develop a registered apprenticeship model that targets dislocated workers and adult learners to help them transition into a high-demand industry. The Registered Apprenticeship programs are expected to produce skilled workers that are in demand in a minimum of one high-growth industry in local area(s) where dislocation occurs. Each location must determine what high-demand industries are driving their economy and where there are job and skill shortages. This model will require applicants to form formal partnerships and/or consortia among WIA, employers (current and/or potential apprenticeship sponsors), organized labor, employer associations, educational institutions, state apprenticeship agencies, or the federal Office of Apprenticeship and other entities whose resources can be leveraged to make the program a success. Members of the partnership/consortium will oversee the design and operation of this initiative.

It is expected that the project will accomplish a seamless transition for adult learners and dislocated workers who will be retrained through Registered Apprenticeship for high demand jobs in industries that will be here for a long time and can provide wages comparable to what they have been earning. Using leveraged resources, incentives may be provided including, but not limited to, wrap around supportive services including stipends. However, it is not ETA's intent to have grant funds used in the provision of supportive services under this component.

Projects should be innovative, fresh approaches to retraining and re-skilling dislocated workers and mature adult learners for high-demand jobs. The following are possible models and linkages with registered apprenticeship

to transition dislocated workers to new industries and which consortia/partnerships may want to test. However, applicants are not limited to these suggestions.

- Identify companies and geographic areas with large concentrations of requests for H–1B visas and develop a demonstration to train and employ dislocated workers to fill these jobs.
- Develop a demonstration which leverages competency-based registered apprenticeship occupations.
- Develop models and linkages with registered apprenticeship to transition workers to the nuclear and alternative energy industries drawing from laid off workers in these communities.
- Explore options for developing ''green collar'' apprenticeships.
- Promote Registered Apprenticeship as a career development strategy in industries with high turnover.

B.3. Project Requirements

Additionally, applicants must include the following in their grant application:

- Description of model.
- Description of the types of High Growth Industry apprenticeable occupations in which the registered apprenticeship program's plans to train and employ workers.
- Description of each partner's role in recruiting, selecting, training, placing and retaining workers in registered apprenticeships in the project.
- Strategies for identifying the employers who will train and employ Adult Learners and/or Dislocated Workers.
- Discuss in detail how the applicant and its partnership/consortium plan to: (1) Conduct outreach strategies to declining businesses and industries; (2) outreach strategies to industries that will employ the dislocated and/or mature adult workers; (3) conduct outreach strategies and orientation sessions to recruit dislocated workers into education and training; (4) utilize support groups and facilitating networks for Dislocated Workers in registered apprenticeships, on or off the job site, to improve their retention.
- Description of all services that will be offered and who will provide them.
- Describe how the partners will assure that there are or will be suitable and appropriate positions available in the High Growth Industry registered apprenticeship programs.
- Activities and Timeline.
- Description of Outcomes. Please note, ETA will consider the successful placement of a minimum of 50 Adult learners and/or Dislocated Workers in High Growth industry registered apprenticeships the primary successful outcome a grantee can achieve.
- Budget.

Background Information for Category 4—Preventing Dislocations of TANF Recipients Moving Into Entry Level Jobs Subject to Economic Churn:

1. Preventing Dislocations of TANF Recipients Demonstration

Since the passage of the Temporary Assistance to Needy Families (TANF) program in 1996, there has been success in transitioning individuals off welfare and into transitional employment. Transitional employment opportunities typically are located on the lowest rung of the career ladder and require work readiness and basic education and skill training. These positions are most susceptible to churn resulting from economic shifts that cause employment opportunities to grow and contract on a regular basis depending on the state of the economy or the season. The result is individuals cycling between low-level employment and government assistance, such as unemployment insurance benefits and food stamps. Former TANF recipients who have moved into employment are becoming the next generation of employees most at risk for dislocation.

Given that unemployment insurance is becoming the new safety net for those former TANF recipients that are moving into the workforce, the goal of this demonstration is to provide additional education and training to former TANF recipients, who have successfully entered transitional employment, to move them up the career ladder in the high-growth, high-demand sectors of healthcare, hospitality, and retail resulting in: (1) An increase in the employment retention of former TANF recipients, (2) a reduction in the number of former TANF recipients that are unemployed, and (3) an increase in earnings for former TANF recipients through placement in career-ladder positions to enable them to achieve self sufficiency. This will require partnerships with the TANF system at the state and local level, education and training providers including adult education and community colleges, and business and industry.

2. Necessary Project Components

Applicants must include the following project components: partner roles and industry focus. These are described in detail below.

- Partner Roles. Required partners in this demonstration include: the State Workforce Agency (applicant) and at least one entity from each of the following categories: local workforce investment board and One-Stop Career Center, state TANF agency, local TANF agency, community or technical college, adult or vocational education provider, business and industry, and faith and community-based organizations. Additional partners are encouraged, but not required, including economic development agencies, the state adult education agency, K–12 high school systems, four year universities, and philanthropic organizations. Partners must submit letters of commitment detailing their roles in the project. At a minimum, the partner should contribute the following to the demonstration:
- The State Workforce Agency should be responsible for coordinating the work of the partners and reaching out to other state agencies.
- Local workforce investment boards and One-Stop Career Centers should at a minimum:
- Work with state or local TANF agencies to identify former TANF recipients who obtained successful entered transitional employment but (1) are currently receiving unemployment insurance or (2) are at risk of unemployment;
- Assess and refer candidates to trainings; and
- Track outcomes of candidates.
- State and local TANF agencies should work with the local workforce investment system to identify former TANF recipients for training; share expertise and models in moving individuals into employment; and leveraging resources where appropriate.
- Community Colleges should map the competencies needed to advance up the chosen career ladder, assist in design and provision of remediation, and provide education and training.
- Adult or Vocational Education Providers should assist in the design and provision of remediation, and provide education and training.
- Business and Industry partners should assist in identifying individuals for the demonstration, identify career ladder opportunities, and work with education and training partners to develop demand-driven training to move individuals up career ladders.
- Faith and Community Based Organizations should share expertise in successful strategies for working with the target population and should provide outreach and wrap around support services as needed. For applicants partnering with faith and community based organizations please visit *http://www.dol.gov/cfbci/accesspoints.htm* for specific mechanisms and strategies for integrating these organizations into the proposal.

Additional partners, including those listed above, will enhance the depth and

breadth of the demonstration and are strongly encouraged.

• Industry Focus. This project is intended to be a sectoral demonstration focused on the healthcare, hospitality, and retail industries. Education and training must be focused on career ladder opportunities in one of these industries. Examples of career-ladder based education and training programs already demonstrated either under the High Growth Job Training Initiative and Community-Based Job Training Grants and by state and local areas, educational institutions and non-profit organizations can be found at *www.workforce3one.org.* The Workforce3 One Web site is a valuable resource for information about demand-driven projects of the workforce investment system, educators, employers, and economic development representatives. ETA encourages applicants to look to existing education and training models that may be adaptable to serve the target population and goals outlined in this Solicitation.

3. Project Requirements

ETA is seeking innovative solutions to address the goal of moving former-TANF recipients up the career ladder in the healthcare, hospitality, and retail industries. The demonstration should meet the needs of former TANF recipients as well as business and industry. In addition, ETA is looking for demonstrations that include *at least two* of the following components:

• Use of college-bridge programs for individuals with low skills. Bridge programs offer a way for low-skilled individuals to successfully complete education and training in a college environment. The bridge program offers an intermediate step between the individual's current position and full integration into college-level coursework;

• Use of contextualized learning to integrate basic skills remediation into industry skills training curricula;

• Use of on-the-job training or other learn/earn education strategies;

• ''Grow your own'' strategies with employers committing to education and training onsite to advance employees in low-level positions and partnering with state and local workforce and TANF agencies to backfill entry-level positions with individuals currently receiving TANF but who are ready to move into transitional employment;

• Non-traditional education models that utilize flexible schedules to accommodate individuals' work and family schedules;

• Development of modularized credit-based courses that allow individuals to break up certificate or degree programs into shorter, more manageable tracks; or

• Inclusion of career counseling and mentors.

Part II. Award Information

1. Award Amount

ETA anticipates awarding between 16 and 20 grants under this solicitation, with individual grants ranging in value from $500,000 to $2 million. However, this does not preclude ETA from funding grants at either a lower or higher amount, or funding a smaller or larger number of projects, based on the type and the number of quality submissions. Applicants are encouraged to submit budgets for quality projects at whatever funding level is appropriate to their project.

2. Period of Performance

The period of grant performance will be up to 36 months from the date of execution of the grant documents. This performance period shall include all necessary implementation and start-up activities, participant follow-up for performance outcomes, and grant close-out activities. ETA may elect to exercise its option to award no-cost extensions to grants for an additional period, based on the success of the program and other relevant factors, if the grantee requests, and provides a significant justification for, such an extension.

3. Leveraged Resources

Under this funding opportunity, ETA is not requiring the applicants to provide leveraged resources. However, projects funded under this solicitation should leverage resources per the rating criteria from key entities in the strategic partnership. Businesses, faith-based and community organizations, economic development entities, education systems, and philanthropic foundations often invest resources to support workforce development. In addition, other federal, state, and local government programs may have resources available that can be integrated into the proposed project. Examples of such programs include other Department of Labor programs such as registered apprenticeship, as well as non-DOL One-Stop partner programs such as Vocational Rehabilitation, Adult Education, and Department of Education Pell Grants.

As applicable, applications will be scored based on the quality and the degree to which the source and use of leveraged funds are clearly explained and the extent to which they are integrated into the project in support of grant outcomes. Leveraging resources in the context of strategic partnerships accomplishes three goals: (1) It allows for the strategic pursuit of resources; (2) it increases stakeholder investment in the project at all levels including design and implementation phases; and (3) it broadens the impact of the project itself. Applicants are encouraged to leverage significant resources from key partners and other organizations to maximize the impact of the project on the community.

Leveraged Resources include the value of goods and services that would be allowable costs if paid for with grant funds whether incurred as a cost by the recipient or a sub-recipient and paid for with either non-federal or federal dollars, or provided as volunteer services valued in accordance with the provisions at 29 CFR part 95.23(d) and (e) or part 97.24(c)(1) and (2), as appropriate. Also, leveraged resources are subject to monitoring reviews. Partnering organizations may provide resources such as supportive services, mentoring, tutoring, and volunteers—all of which are important for grantees to leverage when assisting certain individuals targeted by these funds. For applicants who choose to leverage resources, please include the following information in the technical proposal: (1) The total amount leveraged from federal sources; (2) the total amount leveraged from non-federal sources; (3) the partners contributing the resources; and (4) the projected activities, broken out by the source of the leveraged resource (federal or nonfederal), to be implemented utilizing these resources. Applicants should address leveraged resources (as applicable) in the technical proposal but should not reflect the leveraged resources on the SF424A form.

ETA encourages applicants and their strategic partners to be entrepreneurial as they seek out, utilize, and sustain these resources, whether they are in-kind or cash contributions, when creating strategic partnerships under this solicitation.

4. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal cost principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs.

Limitations on Cost Per Participant. Since training costs may vary considerably depending on the skills and competencies required, flexibility

will be provided on cost per participant. However, applications for funding will be reviewed to determine if the cost of the training is appropriate and will produce the outcomes identified. Applicants should demonstrate that the proposed cost per participant is aligned with existing price structures for similar training in the local area or other areas with similar characteristics. When calculating cost per participant, applicants must distinguish between non-training and training costs utilizing grant funds.

Indirect Costs. As specified in the Office of Management and Budget Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. An indirect cost rate (ICR) is required when an organization operates under more than one grant or other activity whether Federally-assisted or not. Organizations must use the ICR supplied by the cognizant Federal agency. If an organization requires a new ICR or has a pending ICR, the Grant Officer will award a temporary billing rate for 90 days until a provisional rate can be issued. This rate is based on the fact that an organization has not established an ICR agreement. Within this 90 day period, the organization must submit an acceptable indirect cost proposal to their Federal cognizant agency to obtain a provisional ICR.

Administrative Costs. An entity that receives a grant to carry out a project or program under one of the categories in this solicitation may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the Standard Form 424A Budget Information Form. Administrative costs should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an indirect cost rate agreement from its Federal cognizant agency as specified above.

Use of Funds for Supportive Services. It is not ETA's intent for grant funds to be used for the provision of supportive services, such as transportation and childcare, including funds provided through stipends for such purposes. However, applicants are encouraged to identify strategic partners as appropriate who can provide these services as leveraged resources. If supportive services are proposed as an integral part of the project, use of grant funds for this purpose will require a one-time approval from the Grant Officer prior to the grantee incurring these costs.

Salary and Bonus Limitations. None of the funds appropriated in Public Law 109–149, Public Law 110–5, or prior Acts under the heading ''Employment and Training'' that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in Office of Management and Budget (OMB) Circular A–133. See Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2262.*

Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance. The government is generally prohibited from providing direct financial assistance for inherently religious activities (please see 29 CFR part 2, subpart D). These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities except as provided in those regulations. Neutral, non-religious criteria that neither favors nor disfavors religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

ETA Intellectual Property Rights. Applicants should note that grantees must agree to provide ETA a paid-up, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed or for which ownership was purchased under an award, including but not limited to curricula, training models, technical assistance products, and any related materials, and to authorize them to do so. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

Distribution Rights. Selected applicants must agree to give ETA the right to use and distribute all materials developed with grant funds such as training models, curricula, technical assistance products, etc. Materials developed with grant resources are in the public domain; therefore, ETA has the right to use, reuse, modify, and distribute all grant-funded materials and products to any interested party, including broad distribution to the public workforce investment system via the Internet or other means.

Part III. Eligibility Information

1. Eligible Applicants.

Eligible applicants for the grants under all categories shall be SWAs including the five territories of Puerto Rico, Virgin Islands, Guam, Northern Mariana Islands and American Samoa. Each SWA would be required to identify the local workforce investment boards and One-Stop Career Center as established under Section 121 of WIA, [29 U.S.C. 2841] that would be participating in the proposed project. Applicants must submit a letter of commitment from each of the partners participating in the proposed project.

2. Participant Eligibility Requirements

Dislocated Workers. Under Categories 1, 3 and 4, the eligible participants for these demonstrations are dislocated workers. Dislocated Workers eligibility is defined under WIA Section 101(9) as follows.

The term ''dislocated worker'' means an individual who—

(A)(i) has been terminated or laid off, or who has received a notice of termination or layoff, from employment;

(ii)(I) is eligible for or has exhausted entitlement to unemployment compensation; or

(II) has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 134(c), attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

(iii) is unlikely to return to a previous industry or occupation; (B)(i) has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise;

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive services other than training services described in section 134(d)(4), intensive services described in section 134(d)(3), or supportive services, is employed at a facility at which the employer has made a general announcement that such facility will close;

(C) was self-employed (including employment as a farmer, a rancher, or

a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters; or

(D) is a displaced homemaker.

Incumbent Workers. Under Category 2, the eligible participants are incumbent workers at risk for dislocation. Incumbent Workers at risk for dislocation are defined as those workers who are in declining, at risk, or transforming industries who are in need of skill upgrades to avert lay off in the their current position or to obtain new employment in the same or a different industry should their current employment no longer be viable.

TANF Recipients. Under Category 4, eligible participants will meet the definition of a dislocated worker as stated above and will have received assistance under the Temporary Assistance for Needy Families Act within the past five years.

Veterans Priority. The Jobs for Veterans Act (Pub. L. 107–288) provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. In circumstances where a grantee must choose between two equally qualified candidates for training, one of whom is a veteran, the Jobs for Veterans Act requires that the grantee give the veteran priority of service by admitting him or her into the program. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the Job for Veterans Act and its effect on current employment and training programs. TEGL No. 5–03, along with additional guidance, is available at the Jobs for Veterans Priority of Service Web site: *http://www.doleta.gov/programs/vets.*

Part IV. Application and Submission Process

A. Address to Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

Applicants may submit only *one* application under this solicitation. Applications submitted after receipt of the initial application will not be accepted unless the initial application is withdrawn in accordance with Section E. of this part. The proposal must consist of two (2) separate and distinct parts, Parts I—The Cost Proposal and Part II—The Technical Proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and may not be given further consideration. Applicants who wish to apply do not need to submit a Letter of Intent. The completed application package is all that is required.

Part I—The Cost Proposal must include the following three items:

- The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www.doleta.gov/sga/forms.cfm*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant will be considered the Authorized Representative of the applicant.
- All applicants for Federal grant and funding opportunities are required to have a Data Universal Numbering System (DUNS) number provided by Dun and Bradstreet. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this Web site, *www.dunandbradstreet.com,* or call 1–866–705–5711.
- The SF 424A Budget Information Form (available at *http://www.doleta.gov/sga/forms.cfm*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The budget narrative should explain the administrative costs and how they support the project goals. All applicants should indicate training costs-per-participant by dividing the total amount of the budget designated for training by the number of participants trained. Please note that applicants that fail to provide an SF 424, SF 424A and a budget narrative will be removed from consideration prior to the technical review process. If the proposal calls for integrating WIA or other federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A, Budget Information Form, but should be described in the budget narrative. The amount of Federal funding requested for the entire period of performance should be shown together on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit the OMB Survey No. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at: *http://www.doleta.gov/sga/forms.cfm.*

Part II—The Technical Proposal of the application demonstrates the applicant's capabilities to fulfill the intention of the category selected. The Technical Proposal is limited to twenty (20) double-spaced, single-sided, 8.5 inch x 11 inch pages with twelve point text font and one-inch margins. The first page of Part II—The Technical Proposal must consist entirely of an executive summary not to exceed one page. Applicants should number the Technical Proposal beginning with page number one. Any pages over the 20-page limit will not be reviewed. The required letter(s) of commitment and/or documentation of partnership must be submitted and will not count against the 20 page limit. Please note, letters of commitment should be sent with or attached to the application. Additionally, the applicant must reference grant partners by organizational name in the text of the Technical Proposal. No cost data or reference to prices should be included in the Technical Proposal. Applications may be submitted electronically on *http://www.grants.gov* or in hard-copy via U.S. mail, professional overnight delivery service, or hand delivery. These processes are described in further detail in Part IV.C. Applicants submitting proposals in hard-copy must submit an original signed application (including the SF 424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by USDOL/ETA.

C. Submission Date, Times and Mailing Address

The closing date for receipt of applications under this announcement is June 13, 2008. Applications must be received at the address below no later than 4:30 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Please submit one (1) blue-ink signed, typewritten original of the application and two (2) signed photocopies in one package to the U.S. Department of Labor, Employment and Training Administration, Division of Federal

Assistance, Attention: BJai Johnson, Reference SGA/DFA PY–07–10, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Information about applying online through *www.grants.gov* can be found in Section IV.C of this document. Applicants are advised that mail delivery in the Washington area is delayed due to mail decontamination procedures. Hand delivered proposals will be received at the above address.

Also, applicants may apply online through grants.gov (*http://www.grants.gov*). It is strongly recommended that applicants applying online for the first time via grants.gov immediately initiate and complete the ''Get Registered'' registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic application submission in order to avoid unexpected delays that could result in the rejection of an application. It is highly recommended that online submissions be completed at least three (3) working days prior to the date specified for the receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. If submitting electronically through grants.gov, the components of the application must be saved as either .doc, .xls or .pdf files.

Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application required to be received by the 20th of the month must be post marked by the 15th of that month) or (b) was sent by professional overnight delivery service or submitted on grants.gov to the addressee not later than one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed three working days prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by professional overnight delivery service in the event of any electronic submission problems. Applicants take a significant risk by waiting until the last day to submit by grants.gov. ''Postmarked'' means a printed, stamped or otherwise placed impression that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

E. Withdrawal of applications

Applications may be withdrawn by written notice at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part V. Applications Review Process

This section identifies and describes the criteria that will be used to evaluate proposals under each of the four categories. In some cases the evaluation criteria are the same for more than one category and such is identified.

Category 1—Entrepreneurship Opportunities for Dislocated Workers

The criteria and point values for Option A—Project GATE for Dislocated Workers in Rural Areas and Option B—Project GATE for Dislocated Workers Fifty Years and Older are listed in the table below.

1.A. Option Selected for Grant Application	N/A
1.B. Expanding Entrepreneurial Training Opportunities for Dislocated Workers	30
1.C. Strategic Partnerships for Entrepreneurship Development	25
1.D. Program Design and Outcomes	30
1.E. Comprehensive Training Program Leading to Business Formation	10
1.F. Integration with Regional Economic and Talent Development Strategies	5
1.G. Bonus Points	10

1.A. Option Selected for Grant Application

This category contains two project options; therefore, the applicant must indicate under which option they are submitting their grant application. The same application will *not* be reviewed under both categories.

1.B. Expanding Entrepreneurial Training Opportunities for Dislocated Workers (up to 30 points)

As described below, the applicant must show in detail how the grant resources will expand and/or improve upon entrepreneurial training opportunities for WIA Dislocated Workers.

• *Need for Federal Investment (10 points)*—Applicants must clearly outline the need for additional capacity for entrepreneurial training, as well as the necessity of the Federal investment. Successful applications will describe in detail the current challenges the proposal seeks to overcome and must demonstrate how the proposed project will increase opportunities for entrepreneurial training for WIA Dislocated Workers in rural areas *or* WIA Dislocated Workers 50 years and older.

• *Expanding Entrepreneurial Training Opportunities for Dislocated Workers (15 points)*—Applicants must clearly show how the grant resources will expand the entrepreneurial training options available to WIA Dislocated Workers. Applications must clearly show how many more individuals will be served than are currently being served by existing programs. Applications will be scored on how well they clearly describe the pipeline of individuals that would be trained and the recruitment strategy by which they would learn of the training opportunity. ETA expects that at minimum 200 individuals would be trained per $1 million in grant award.

• *Sustainability and Scalability (5 points)*—ETA places a high premium on demonstrations that can be sustainable after the grant period has ended. Proposals should outline plans for sustainability of the program post-grant

in regard to the program and partnerships. Also, applications will outline the feasibility of expanding a successful program in terms of geographic reach, sites served, numbers of individuals trained, and program replication.

1.C. Strategic Partners for Entrepreneurial Development (up to 25 points)

Each SWA would be required to identify the local workforce investment boards and One-Stop Career Centers that would be participating in the project. In addition, the SWA must identify the sources of local entrepreneurial technical assistance and training that will be employed for project participants. These sources could include small business development centers, women's business development centers, minority business development centers, community-based or faith-based service providers, local chambers of commerce, or other local economic development entities including rural economic development organization. Applicants must provide letters of commitment from each partner detailing their involvement in the proposal.

• *Strategic Partners (10 points)*—The strength of the strategic partnership is critical to the successful execution of the proposal and the post-grant viability of the program. Applicants must clearly explain how the range of partners matches the needs of participants and provides the deepest possible reach into the affected community. In addition, the strategic partners must be engaged to the fullest extent possible and articulate how each partner's area of expertise will be utilized in the project. Letters of commitment from each partner detailing their participation in each stage of the project are required. The applicant must discuss how the partners will interact at each stage of the project and the ability of the lead organization to successfully manage the partnership and project. In selecting strategic partners, it is important to engage those partners that can provide a complete service delivery strategy for project participants. This complete strategy would include partners that provide assistance with business counseling, entrepreneurial training, and loan application and financial assistance.

• *Economic Development Institutions (10 points)*—Critical to the success of the grants will be the participation of key economic development institutions in the local area. These institutions could include small business development centers, women's business development centers, minority business development centers, local chambers of commerce, or other local economic development entities including rural economic development organizations. For example, applicants would leverage the business counseling expertise of a local small business development center or SCORE (Counselors to America's Small Business) chapter. Applicants will be scored based upon how well they describe the role of the economic development institutions in the project and how they will integrate into a seamless service delivery strategy for project participants.

• *Organizational Capacity (5 points)*—The applicant must discuss their ability to successfully manage the project and partnership. Applications will be scored based on how well they detail each partner's experience, expertise, and ability to fulfill their part of the proposal and document any history of past collaborations (if applicable). In addition, expertise in previous demonstration grant projects and entrepreneurship projects should be well documented.

1.D. Program Design and Outcomes (up to 30 points)

In evaluating the quality of the program design and management plan for each proposal, ETA will consider the following elements.

• *Program Design (25 points)*—Applicants must clearly outline the training or learning program to be developed, expanded, and/or created, and include timelines for implementation and benchmark evaluations as appropriate. Applicants will be scored on this criteria based on their ability to implement the GATE model as described in Part I of this SGA. Applicants will also be scored on the extent to which the management plan appears likely to achieve the objectives of the project in meeting the goals of the Project GATE grant.

• *Performance Management and Outcomes (5 points)*—Applications will project the increased number of individuals that will be able to receive training and business counseling. Estimations of projected increases in individuals trained should be compelling and fully formed, and include consideration from all appropriate factors.

1. E. Comprehensive Training Program Leading to Business Formation (up to 10 Points)

The applicant must describe the type of curriculum being used for the entrepreneurial training portion of the grant. At minimum, training providers must offer basic courses for those just starting businesses that focus on developing a business plan. Topics covered in these basic courses should include: the development of a business plan, market research, marketing, pricing, financing, cash flow, accounting, hiring, permits and licenses, and legal issues. Other courses should target participants who already have developed business plans and may have started their businesses, but need assistance in growing the business. These more advanced courses may cover topics such as growth strategies, business planning, and customer relations.

1.F. Integration with Regional Economic and Talent Development Strategies (up to 5 points)

Scoring on this criterion will be based on the applicant's ability to demonstrate that their project is aligned with and integrated into their region's talent development and economic development strategy. Applicants may receive up to 5 points by:

• Summarizing the region's strategic vision and workforce education strategies in support of talent development and economic growth.

• Either describing how their capacity building and training solution is part of or complements existing approaches under regional talent development and economic development plans and initiatives; or describing how their project is a catalyst for bringing partners together to begin the analysis and strategic planning in their region.

• Describing any regional partnerships that are part of their capacity building and training plans and detail how the partnerships are broader and deeper in scope than the local partnerships in place for the proposed capacity building and training activity. Regional partners may include regional business leadership and organizations, such as chambers of commerce; economic development entities at the regional level; the philanthropic community; seed and venture capital organizations or individuals; investor networks; entrepreneurs; and faith and community-based organizations.

• For applicants leveraging resources, describing how the funds leveraged come from regional partners or from existing or planned talent development efforts within the region.

1.G. Bonus Points (up to 10 points)

ETA will award a total of ten bonus points to applicants who address the following two criteria.

• *Financial Assistance (5 points)*—Additional points will be awarded to SWAs that identify service providers for their client service delivery plan that

provide direct financial assistance to their clients. Types of direct financial assistance may include, but are not limited to, individual development accounts, low-cost, low-documentation loans, grants, seed money, or angel investment.

• *Work Search Waiver (5 points)*—Additional points will be awarded to those states that provide dislocated workers receiving unemployment compensation a waiver from the work search requirement while engaged in entrepreneurial training.

Category 2—Getting Ahead of the Curve: Raising Educational/Skill Levels of Workers in Declining Industries

The criteria and point values for this category are listed in the table below.

2.A. Statement of Need	10
2.B. Strategic Partnerships	20
2.C. Project Design and Implementation	40
2.D. Work plan, Timeline, and Outcomes	15
2.E. Program Management and Organizational Capacity, and Budget	10
2.F. Integration with Regional Economic and Talent Development Strategies	5

2.A. Statement of Need (up to 10 points)

Applicants must clearly outline the need in their state for an early warning network and strategies to engage businesses in delivering incumbent worker training in declining industries. Successful applicants will describe in detail the current challenges in their state in identifying industries and companies in decline or transformation and in re-skilling or up-skilling incumbent workers to avoid dislocation. Additionally, the applicant should describe the workforce system's current relationship with businesses and how the proposed project will increase the engagement with at-risk business with the result of raising the education and skill levels of their workers.

2.B. Strategic Partnerships (up to 20 points)

The applicant must demonstrate that strategic partnerships are an integral component of their Early Warning Network and Business Engagement Strategy and are comprised at a minimum of: the workforce system, education and training providers (which may include community and technical colleges, adult education and vocational education programs or providers, alternative education programs or providers, four-year universities, and other private or not-for-profit training providers), business and industry, and economic development entities.

Applicants must:

• Identify all current and potential partners and explain the meaningful role that each partner will play in the project.

○ Required partners include the workforce system at the state and local levels, governmental and/or non-governmental economic development agencies at the state and/or local levels, one or more educational or training entities, one or more companies or business or industry associations, and one or more outplacement firms. Additionally, optional partners include philanthropic organizations, faith and community-based organizations, governmental and non-governmental education agencies, and labor management organizations if applicable.

• Describe how new and existing partnerships will be engaged to plan and implement the Early Warning Network and Business engagement strategy.

• Identify the sources of leveraged resources and what activities will be implemented using those resources

• Elaborate on how leveraged resources and partnerships will achieve more significant impacts

• Demonstrate existing coordination of partnerships or capacity to quickly establish these links

• Demonstrate that the project has the partnerships necessary to have broad community reach.

Points for this criterion will be awarded based on several factors:

• The completeness of the partnership, based on project design;

• The degree of meaningful engagement of partners in project activities; and

• The extent to which the applicant integrates partners' strengths and assets into project design and implementation; and;

• The extent to which strategic partnerships meet the elements laid our under the early warning system and business engagement planning and implementation sections of this Solicitation.

2.C. Project Design and Implementation (up to 40 points)

The applicant must fully describe all features of the proposed project, how it would be operationalized and how all activities, strategies, and resources would be integrated to support the goal of raising the education and skill levels of workers at risk of dislocation.

Elements in this section should address:

• A description of the strategies that will be employed to create the early warning system including the demonstration of strong collaboration with state Labor Market Information (LMI) departments through documented ongoing working relationships with LMI staff; working knowledge of core products, services, reports and Web sites; selection of targeted occupations and industries based on Workforce Information; and collaboration with LMI departments to develop new products and services to assist in the prediction of economic change;

• Aligning resources between different federal, state, and local governments;

• Leveraging financial and non-financial resources from governmental and non-governmental partners;

• Outreach and education strategies to business and industry about benefits of collaboration with the workforce system, early notice of potential layoffs, and the benefits of incumbent worker training for the purposes of up-skilling or re-skilling employees;

• Strategy for provision of incumbent worker training and the credentials to be associated with training;

• Strategy for re-employment of individual following completion of training, either within the same company or industry or in a new industry or occupation;

• Creation of a replication model to be disseminated to other workforce agencies;

• A plan for sustainability beyond the life of the grant;

• Identification of existing education and training models, remediation models, competency models, career ladders, curricula, and other materials; and

• A plan for identifying or creating curricula, competency models, career ladders, and other materials to support training.

Points for this criterion will be awarded based on several factors:

• The completeness of the project description and evidence that proposed activities will achieve the objectives of

this Solicitation as described in this Solicitation, including clear strategies for planning and implementation phases;

- Demonstrated capacity of the application to align resources and provide services;
- Evidence that the proposed activities are clearly linked to the need in the region; and
- The existence of a clear sustainability plan that will continue to support the early warning network and business engagements strategies to identify or design appropriate incumbent-worker training programs, and deliver training to workers at risk for layoff.

2.D. Work plan, Timeline, and Outcomes (up to 15 points)

In this section, applicants will provide a plan of work that outlines how the early warning network and business engagement activities and incumbent worker training will be accomplished. The work plan should include a timeline as well as the lead partner for each activity/strategy. Applicants are encouraged to create tight work plans that will provide actionable activities during the period of performance for this grant. It is not necessary to have an extensive list of strategies, but rather strategies that will bring about the desired outcomes and address the challenges laid out in the statement of need. In addition, the applicant must provide information on the outcomes which are expected to be achieved. Applicants are not required to include specific numerical outcome projections but should include a detailed summary of the projected outcomes and impacts appropriate to the nature of their project including the number of businesses impacted, the return of investment to the business, the number of individuals who receive services, the number of individuals who receive training, the number of individuals who complete training, the number of credentials awarded, ETA's common measures (entered employment, employment retention, average earnings), wage gains, promotions, and other outcomes determined important by the applicant.

Scoring on this section will be based on the extent to which applicants provide the following:

- The potential for the work plan to achieve the desired outcomes;
- The viability of the timeline;
- The extent to which the expected project outcomes are identified, realistic and consistent with the objectives of the project;
- The ability of the project to achieve the outcomes in the stated timeframe; and
- The appropriateness of the outcomes with respect to the challenges described in the statement of need and the proposed project activities listed in the project design and implementation section.

2.E. Program Management, Organizational Capacity, and Budget (10 points)

To satisfy this criterion, applicants must describe their proposed project management structure including, where appropriate, the identification of a proposed project manager, discussion of the proposed staffing pattern, and the qualifications and experience of key staff members. Applicants should also show evidence of the use of data systems to track outcomes in a timely and accurate manner. The applicant should include a description of organizational capacity and the organization's track record in projects similar to that described in the proposal and/or related activities of the primary partners.

Scoring under this criterion will be based on the extent to which applicants provide evidence of the following:

- The time commitment of the proposed staff is sufficient to ensure proper direction, management, and timely completion of the project;
- The roles and contribution of staff, consultants, and collaborative organizations are clearly defined and linked to specific objects and tasks;
- The background, experience, and other qualifications of the staff are sufficient to carry out their designated roles;
- The applicant organization has significant capacity to accomplish the goals and outcomes of the project, including the ability to collect and manage data in a way that allows consistent, accurate, and expedient reporting; and
- The budget is sufficient to meet project goals.

2.F. Integration with Regional Economic and Talent Development Strategies (up to 5 points)

Scoring on this criterion will be based on the applicant's ability to demonstrate that their project is aligned with and integrated into their region's talent development and economic development strategy. *Applicants may receive up to 5 points by:*

- Summarizing the region's strategic vision and workforce education strategies in support of talent development and economic growth.
- Either describing how their capacity building and training solution is part of or complements existing approaches under regional talent development and economic development plans and initiatives; or describing how their project is a catalyst for bringing partners together to begin the analysis and strategic planning in their region.
- Describing any regional partnerships that are part of their capacity building and training plans and detail how the partnerships are broader and deeper in scope than the local partnerships in place for the proposed capacity building and training activity. Regional partners may include regional business leadership and organizations, such as chambers of commerce; economic development entities at the regional level; the philanthropic community; seed and venture capital organizations or individuals; investor networks; entrepreneurs; and faith and community-based organizations.
- For applicants leveraging resources, describing how the funds leveraged come from regional partners or from existing or planned talent development efforts within the region.

Category 3—Innovative Adult Learning Models for Dislocated Workers

The rating criteria listed below apply to applications focusing on either Option A or Option B. All applicants are required to use the rating criteria format when developing their proposals. Up to 100 points may be awarded to an application. 10 bonus points are available for applications focusing on Option B—Apprenticeship strategies. There are no bonus points for applications submitted under Option A.

The criteria and point values for this category are listed in the table below.

3.A. Option Selected for Grant Application	N/A
3.B. Statement of Need	10
3.C. Partnership Composition, Capacity and Management	25
3.D. Project Description, Strategies, Work Plan and Time Line	30
3.E. Scope of Project and Projected Outcomes	30
3.F. Integration with Regional Economic and Talent Development Strategies	5

3.G. Bonus for Option B—Innovative Earn/Learn Model Using Apprenticeship 10

3.A. Option Selected for Grant Application

This category contains two grant award options; therefore, the applicant must indicate under which option they are submitting their grant application: Option A—Innovative Adult Learning Strategies or Option B—Innovative Earn/Learn Models Using Apprenticeship.

3.B. Statement of Need (up to 10 points)

Applicants must clearly outline the need for innovative adult learning strategies in the community or communities to be served. Successful applicants will describe in detail: (1) The current unemployment and poverty rates in the targeted community(ies) of the project; (2) the layoffs/dislocations in the community(ies); and (3) the high growth high demand industries and occupations in the area, and 4) the skill requirements in the high growth and high demand community or communities to which most of the dislocated workers will be re-employed. *The applicant must:*

- Describe the need for this project in the communities to be served.
- Describe unemployment and poverty rates in these communities.
- Describe the layoffs/dislocations that have occurred in the past three years.
- Describe skill and job shortages in the communities to which most of the dislocated workers will be re-employed.

3.C. Partnership Composition, Capacity and Management (up to 25 points)

The applicant must demonstrate that the proposed project will be implemented by a strategic partnership. The applicant must identify the partners by organizational name and category, explain the meaningful role each partner will play in the project, and document the leveraged resources from each partner. The amount of leveraged resources will not be factored into the score for this section, rather applications will be scored on the quality and the degree to which the source and use of the funds are clearly explained and integrated into the project in support of grant outcomes. Additionally, the applicant must describe its (or the consortium of partners) capacity to manage the project, including identifying all key tasks, the hours required for the completion of such tasks, and the partner/persons responsible for completing each task.

The applicant must describe in detail their experience, capability and qualifications for administering this project. Scoring on this criterion will be based on the extent to which applicant provide evidence of the following: *To be considered fully responsive, the applicant must address all of the following:*

- Describe each partner's experience, how and why the partners were selected and clearly define why what they bring to the partnership will make it make it successful;
- Describe each partner's role in recruiting, selecting, training, placing and retaining workers into employment.
- Describe each partner's specific role and tasks in the project and that their commitment to sustainability is sufficient to ensure both successful completion of the project and its sustainability after the end of the grant.
- Each partner has a well-defined role in recruiting, selecting, training, placing and/or retaining workers into employment.
- Describe how the management structure and staffing of the organizations are aligned with the grant requirements, vision, and goals; and how the structure and staffing are designed to ensure responsible general management of the project.
- Identify all key tasks, the hours required for the completion of such tasks, and the partner/persons responsible for completing each task.
- Where applicable, clearly differentiate between the roles and contributions of: (1) The applicant or, the partnership/consortium (where applicable) under the grant, (2) staff, and (3) any proposed consultants or subcontractors and, providing information on each of the above, link each entity to specific objects and tasks;
- The time commitment of the proposed staff is sufficient to ensure proper direction, management, and timely completion of the project;
- Provide resumes of individuals who will manage and staff the project and describe why the background, experience, and other qualifications of the staff are sufficient to carry out their designated roles; and
- The applicant organization has significant capacity to accomplish the goals and outcomes of the project, including the ability to collect and manage data in a way that allows consistent, accurate, and expedient reporting.

Applicants must clearly address the above elements. In addition to the above, when evaluating proposals, reviewers will be using the following questions. Please make sure that these questions are addressed in the proposal.

- Does the applicant clearly indicate an understanding of each element in the specific program?
- Will the partners identified and their proposed roles meet the objectives outlined in the Solicitation?
- Do the partnership roles thoroughly identify, describe and consider each element related to partnership outlined in this category of the Solicitation?

3.D. Project Description, Strategies, Work Plan and Time Line (up to 30 points)

In this section the applicant will clearly describe the vision and blueprint for their project and how it will be developed, including providing sufficient explanation and detail about the types of activities and strategies which that will be used. Applicant must also include a clear and detailed work plan with a timeline that outlines how the work will be accomplished in a manner that is realistic and sufficient to meet the goals of objectives of the project within in the identified budget and timeframe.

Applicants must clearly address the above elements. In addition to the above, when evaluating proposals, reviewers will be using the following questions. Please make sure that these questions are addressed in the proposal.

- Does the applicant clearly indicate an understanding of each element specified in the project requirements section of this Solicitation?
- Are the proposed solutions logical, reasonable, and comprehensive? Will they meet the objectives outlined in the SGA?
- Does the proposal thoroughly identify, describe, and consider each element of the specific program?
- Is the proposal presented in a clear and concise format?

3.E. Scope of Project and Projected Outcomes (up to 30 points)

In this section, applicants will provide a plan of work that clearly conveys the scope of the project and the outcomes projected to be achieved during the life of the grant. Through its project scope and projected outcomes, the applicant must demonstrate the viability of its model in helping mature adult workers/dislocated workers learn new skills at a faster and more in-depth rate.

Scoring on this section will be based on the extent to which applicants provide the following:

• *Discuss in detail how they plan to present a clear strategy to:* (1) Conduct outreach strategies to businesses and industries who will employ the dislocated and/or mature adult workers and develop outreach strategies and orientation sessions to recruit dislocated workers into education and training; (2) develop outreach and education strategies to declining businesses and industries to advise them of the grant's purpose and activities and seek their participation and support;

• Describe the outcomes the applicant anticipates as a result of the project that include but are not limited to: ETA's common measures, the number of Dislocated Workers to be placed in employment, and the number of credentials to be awarded;

• The extent to which the projected outcomes are realistic and consistent with the objectives of the project;

• The potential for the proposed project to achieve the desired outcomes;

• The appropriateness of the outcomes with respect to the challenges described in the statement of needs and the proposed project activities detailed in the work plan.

• Document any leveraged resources or funding anticipated for the accomplishment of the proposed project and a description of how the funds will be used.

Please note, to be considered fully responsive and able to achieve full points in this section, each of the above must be addressed.

3.F. Integration with Regional Economic and Talent Development Strategies (up to 5 points)

Scoring on this criterion will be based on the applicant's ability to demonstrate that their project is aligned with and integrated into their region's talent development and economic development strategy. *Applicants may receive up to 5 points by:*

• Summarizing the region's strategic vision and workforce education strategies in support of talent development and economic growth.

• Either describing how their capacity building and training solution is part of or complements existing approaches under regional talent development and economic development plans and initiatives; or describing how their project is a catalyst for bringing partners together to begin the analysis and strategic planning in their region.

• Describing any regional partnerships that are part of their capacity building and training plans and detail how the partnerships are broader and deeper in scope than the local partnerships in place for the proposed capacity building and training activity. Regional partners may include regional business leadership and organizations, such as chambers of commerce; economic development entities at the regional level; the philanthropic community; seed and venture capital organizations or individuals; investor networks; entrepreneurs; and faith and community-based organizations.

• For applicants leveraging resources, describing how the funds leveraged come from regional partners or from existing or planned talent development efforts within the region.

3.G. Bonus Points for applicants focusing on Apprenticeship strategies (Option B) (up to 10 points)

Bonus points will be awarded for proposals that demonstrate the following:

• Capacity to graduate 100 or more apprentices (10 points) into apprenticeships/jobs.

Category 4—Preventing Dislocations of TANF Recipients Moving Into Entry Level Jobs Subject to Economic Churn

The criteria and point values for the evaluation criteria under this category are listed in the table below:

4.A. Statement of Need	10
4.B. Partnership Composition, Capacity and Management	25
4.C. Project Description, Strategies, Work Plan and Time Line	30
4.D. Scope of Project and Projected Outcomes	30
4.E. Integration with Regional Economic and Talent Development Strategies	5

4.A. Statement of Need (up to 10 points)

Applicants must clearly outline the need for innovative adult learning strategies in the community to advance dislocated former TANF recipients up the career ladder. Successful applicants will describe in detail: (1) The pool of former TANF recipients who are unemployed or at risk for unemployment; (2) the occupations and industries of those individuals; (3) the career ladder opportunities for individuals to advance into; and (4) how the project will enhance coordination between federal, state, and local agencies in serving this target population. *The applicant must: describe the need for this project in the communities to be served by indentifying:*

• The pool of former TANF recipients who are unemployed or at risk for unemployment,

• The occupations and industries of those individuals;

• The career ladder opportunities for individuals to advance into; and

• How the project will enhance coordination between federal, state, and local agencies in serving this target population.

4.B. Partnership Composition, Capacity and Management (up to 25 points)

The applicant must demonstrate that the proposed project will be implemented by a strategic partnership. The applicant must identify the partners by organizational name and category, explain the meaningful role each partner will play in the project, and document the leveraged resources from each partner. The amount of leveraged resources will not be factored into the score for this section, rather applications will be scored on the quality and the degree to which the source and use of the funds are clearly explained and integrated into the project in support of grant outcomes. Additionally, the applicant must describe its (or the consortium of partners) capacity to manage the project, including identifying all key tasks, the hours required for the completion of such tasks, and the partner/persons responsible for completing each task. The applicant will also describe in detail their experience, capability and qualifications for administering this project. *Scoring on this criterion will be based on the extent to which applicant provide evidence of the following:*

• How and why partners were selected and what they bring to the partnership to make it successful;

• How partners will provide maximum depth and breadth to the project including providing access to poor, disadvantaged, and disconnected populations;

• How each partner's specific role and tasks in the project is sufficient to ensure both successful completion of the project and its sustainability after the end of the grant;

• Each partner has a well-defined role in recruiting, selecting, training, placing and/or retaining workers into employment;

• The management structure and staffing of the organizations are aligned with the grant requirements, vision, and goals; and how the structure and staffing are designed to assure responsible general management of the project;

• Clearly define the roles and contributions of: (1) The applicant or the partnership/consortium (where applicable), (2) staff, and (3) any proposed consultants or subcontractors and link each entity to specific objects and tasks;

• The time commitment of the proposed staff is sufficient to ensure proper direction, management, and timely completion of the project;

• Provide resumes of individuals who will manage and staff the project and describe why the background, experience, and other qualifications of the staff are sufficient to carry out their designated roles; and

• The applicant organization has significant capacity to accomplish the goals and outcomes of the project, including the ability to collect and manage data in a way that allows consistent, accurate, and expedient reporting.

Applicants must clearly address the above elements. In addition to the above, when evaluating proposals, reviewers will be using the following questions. Please make sure that these questions are addressed in the proposal.

• Does the applicant clearly indicate an understanding of each element in the specific program?

• Will the partners identified and their proposed roles meet the objectives outlines in the Solicitation?

• Do the partnership roles thoroughly identify, describe and consider each element related to partnership outlined in this category of the Solicitation?

4.C. Project Description, Strategies, Work Plan and Time Line (up to 30 points)

In this section the applicant will clearly describe the vision for their project and how it will be developed, including providing sufficient explanation and detail about the types of activities and strategies that will be used. Applicant must also include a clear and detailed work plan with a timeline that outlines how the work will be accomplished in a manner that is realistic and sufficient to meet the goals of objectives of the project within in the identified budget and timeframe.

Applicants must clearly address the above. In addition to the above, when evaluating proposals, reviewers must address the following questions. Does the applicant clearly indicate an understanding of each element specified in the project requirements section of this Solicitation?

• Are the proposed solutions logical, reasonable, and comprehensive? Will they meet the objectives outlined in the SGA?

• Does the proposal thoroughly identify, describe, and consider each element of the specific program?

• Is the proposal presented in a clear and concise format?

4.D. Scope of Project and Projected Outcomes (up to 30 points)

In this section, applicants will provide a plan of work that clearly conveys the scope of the project and the outcomes projected to be achieved during the life of the grant. Through its project scope and projected outcomes, the applicant must demonstrate the viability of its model in helping mature adult workers/dislocated workers learn new skills at a faster and more in-depth rate.

Scoring on this section will be based on the extent to which applicants provide the following:

• Presentation of a clear strategy to: (1) Conduct outreach strategies to businesses and industries who will employ the dislocated former TANF recipients; and (2) conduct outreach strategies and orientation sessions to recruit dislocated former TANF recipients into education and training with a special emphasis on community and faith-based groups that operate in targeted neighborhoods and communities;

• Comprehensive outcomes anticipated as a result of the project that include, but are not limited to: ETA's common measures, the number of Dislocated Workers to be placed in employment, and the number of credentials to be awarded;

• The extent to which the projected outcomes are realistic and consistent with the objectives of the project;

• The potential for the proposed project to achieve the desired outcomes;

• The appropriateness of the outcomes with respect to the challenges described in the statement of needs and the proposed project activities detailed in the *Project Description, Strategies, Work Plan and Time Line* section.

4.E. Integration With Regional Economic and Talent Development Strategies (up to 5 Points)

Scoring on this criterion will be based on the applicant's ability to demonstrate that their project is aligned with and integrated into their region's talent development and economic development strategy. *Applicants may receive up to 5 points by:*

• Summarizing the region's strategic vision and workforce education strategies in support of talent development and economic growth.

• Either describing how their capacity building and training solution is part of or complements existing approaches under regional talent development and economic development plans and initiatives; or describing how their project is a catalyst for bringing partners together to begin the analysis and strategic planning in their region.

• Describing any regional partnerships that are part of their capacity building and training plans and detail how the partnerships are broader and deeper in scope than the local partnerships in place for the proposed capacity building and training activity. Regional partners may include regional business leadership and organizations, such as chambers of commerce; economic development entities at the regional level; the philanthropic community; seed and venture capital organizations or individuals; investor networks; entrepreneurs; and faith and community-based organizations.

• For applicants leveraging resources, describing how the funds leveraged come from regional partners or from existing or planned talent development efforts within the region.

Review and Selection Process. Applications will be accepted after the publication of this announcement until the closing date. Applicants may submit only one application under this solicitation. Applications submitted after receipt of the initial application will not be accepted unless the initial application is withdrawn in accordance with Section E. of this part. A technical review panel will make a careful evaluation of applications against the criteria set forth in Part V of this Solicitation. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as: urban, rural, and geographic balance; the availability of funds; and which proposals are most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer, who may consider any information that comes to his attention. ETA may or may not award grants under each Category of this Solicitation, depending on the quality and quantity of proposals submitted. Separate panels for each

category will be convened to score proposals. The Grant Officer may choose to select a lower scoring proposal from one category (or option) over a higher scoring proposal from another category or option if she determines that such a selection is more advantageous to the government. ETA may elect to award the grant(s) with or without prior discussions with the applicants. The Government will consider applications rated by the evaluation panels with a score of 80 or above to be eligible for a grant award. Applicants that score less than 80 will not be eligible for a grant award. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer.

Part VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA Web site at *http://www.doleta.gov.* Applicants selected for award will be contacted directly before the grant's execution. Applicants not selected for award will be notified by mail as soon as possible.

Note: Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, ETA may enter into negotiations about such items as programs components, staffing, and administrative systems in place to support grant implementation. If negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

a. Workforce Investment Act—20 CFR part 667 (General Fiscal and Administrative Rules).

b. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).

e. Profit Making Commercial Firms—FAR—48 CFR Part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements).

f. All entities must comply with 29 CFR parts 93 and 98, and, where applicable, 29 CFR parts 96 and 99.

g. The following administrative standards and provisions may also be applicable:

i. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;

ii. 29 CFR part 30—Equal Employment Opportunity in Apprenticeship and Training;

iii. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;

iv. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;

v. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;

vi. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor;

vii. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;

vii. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998. In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c) (4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Note: Except as specifically provided in this Notice, ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

C. Special Program Requirements

ETA will require that the program or project participate in an evaluation of overall performance. To measure the impact of the grant program, ETA will arrange for or conduct an independent evaluation of the outcomes and benefits of the projects. Grantees must agree to make records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of ETA, including after the expiration date of the grant.

D. Reporting

As a condition of participation in the grant program, applicants will be required to submit periodic reports such as the Quarterly Financial Reports, Progress Reports and Final Reports as follows:

Quarterly Financial Reports. A Quarterly Financial Status Report (ETA 9130)/OMB Approval No. 1205–0461 is required until such time as all funds have been expended and/or the grant period has expired. Quarterly financial reports are due 45 days after the end of each calendar year quarter. Grantees must use ETA's Online Electronic Reporting System.

Quarterly Progress Reports. The grantee must submit a quarterly Performance Progress Report, SF-PPR/OMB Approval Number: 0970–0443 to the designated Federal Project Officer within 45 days after the end of each calendar year quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. ETA may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet ETA's reporting requirements. The quarterly progress report must be in narrative form and must include:

In-depth information on accomplishments including project success stories, upcoming grant activities, promising approaches and processes, and progress toward performance outcomes, among others. Also, reports should include updates on product, curricula, training development, challenges, barriers, or concerns regarding project progress. Reports should also include lessons learned in the areas of project administration and management, project implementation, partnership relationships, and other related information. ETA will provide grantees with guidance and tools to help develop

the quarterly reports once the grants are awarded.

Final Report. A draft final report must be submitted no later than 60 days prior to the expiration date of the grant. This report must summarize project activities, employment outcomes, and related results of the training project, and should thoroughly document capacity building and training approaches. The final report should also include copies of all deliverables, *e.g.* curricula and competency models. After responding to ETA questions and comments on the draft report, three copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by ETA for preparing the final report.

Part VII. Agency Contact Information

For further information regarding this SGA, please contact BJai Johnson, Grants Management Specialist, (202) 693–3296. (Please note this is not a toll-free number) Applicants should fax all technical questions to (202) 693–2879 and must specifically address the fax to the attention of BJai Johnson and should include SGA/DFA PY–07–10, a contact name, fax and phone number, and e-mail address. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm,* at *http://www.grants.gov,* as well as in the **Federal Register**.

Part VIII. Additional Resources of Interest to Applicants

Resources for the Applicant

ETA maintains a number of web-based resources that may be of assistance to applicants.

- America's Service Locator at *www.servicelocator.org* provides a directory of the nation's One-Stop Career Centers.
- Applicants are encouraged to review ''Help with Solicitation for Grant Applications'' at *http://www.dol.gov/cfbci/sgabrochure.htm.*
- For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government'' available at *http://www.whitehouse.gov/government/fbci/guidance/index.html.*

Other Information

OMB Information Collection No. 1205–0458.

Expires: September 30, 2009.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, the OMB Desk Officer for ETA, Office of Management and Budget, 200 Constitution Avenue, NW., Room N–1031, Washington, DC 20210. Please do not return the completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation. This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicants best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Signed at Washington, DC this 8th day of May, 2008.

James W. Stockton,

Grant Officer.

[FR Doc. E8–10971 Filed 5–15–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before June 16, 2008.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic mail: Standards-Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

We will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Office of Standards, Regulations, and Variances at 202–693–9449 (Voice), *reynolds.lawrence@dol.gov* (E-mail), or 202–693–9441 (Telefax), or contact Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the

requirements and procedures for filing petitions for modifications.

II. Petitions for Modification

Docket Number: M–2008–012–C.
Petitioner: Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763.
Mine: Mine #81, MSHA I.D. No. 15–12753, located in Leslie County, Kentucky.
Regulation Affected: 30 CFR 75.364(b)(1) (Weekly examination).
Modification Request: The petitioner requests a modification of the existing standard to permit check points (examination points) to be established in six locations of the Turkey Creek Cutout Mains due to poor roof conditions. The petitioner proposes to establish examination points at certain points to evaluate airflow entering the Turkey Creek Cutout Mains and exiting the Turkey Creek Cutout Mains. The petitioner also proposes to establish ventilation check points between certain breaks of the Turkey Creek Cutout Mains. The petitioner states that: (1) The size of the areas that has adverse roof conditions is substantial and would expose rehabilitation crews to draw rock hazards unnecessarily; (2) the Turkey Creek Cutout Mains has value for the mines from a ventilation standpoint and it is mine managements' desire not to seal these portals; (3) the areas are no longer utilized from supplies or personnel travel; (4) the area will continue to be examined as required by the standard, but evaluation of the inlet and outlet would provide the necessary examination without exposing the mine personnel to roof hazards; and (5) no less degree of safety is ensured by traveling to both ends of the mains and verifying adequate air volume and quality at the noted evaluation points and check points. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2008–013–C.
Petitioner: South Tamaqua Coal Pockets, Inc., 804 West Penn Pike, Tamaqua, Pennsylvania 18252.
Mine: Yorktown Operation, MSHA I.D. No. 36–09088, located in Luzerne County, Pennsylvania.
Regulation Affected: 30 CFR 77.1200(c) & (k) (Mine map).
Modification Request: The petitioner requests a modification of the existing standard to permit the use of cross-sections in lieu of contour lines at regular intervals through the area to be mined and to limit the required mapping of mine workings below to those present within 100 feet of the vein(s) being mined. The petitioner states that: (1) Due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible; (2) use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably; (3) the vast majority of current surface anthracite mining involves either the mining of remnant pillars from previous mining/mine operators or the mining of veins of lower quality in proximity to inaccessible and frequently flooded abandoned mine workings which may or may not be mapped; and (4) the mine workings below are usually inactive and abandoned, and therefore, are not subject to changes during the life of the mine, but active mines will be mapped. The petitioner asserts that the proposed alternative method will in no way provide less than the same measure of protection than that afforded the miners under the existing standard.

Docket Number: M–2008–014–C through M–2008–018–C.
Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.
Mine: Ondo Extension Mine, MSHA I.D. No. 36–09005, Nolo Mine, MSHA I.D. No. 36–08850, Gillhouser Run Mine, MSHA I.D. No. 36–09033, all located in Indiana County, Pennsylvania; Madison Mine, MSHA I.D. No. 36–09127, located in Cambria County, Pennsylvania; and Dora 8 Mine, MSHA I.D. No. 36–08704, located in Jefferson County, Pennsylvania.
Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).
Modification Request: The petitioner requests a modification of the existing standard to permit the use of low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut or within 150 feet of pillar workings, under controlled conditions, for testing and diagnosing mining equipment. The petitioner proposes to use the following equipment within 150 feet of pillar workings. The petitioner seeks modification of 30 CFR 75.500(d) and any other applicable standards as they pertain to restricting the use of non-permissible or non-intrinsically safe electrical testing and diagnostic equipment used by maintenance personnel for trouble shooting and repair of mining equipment commonly used and accepted which may include, but is not limited to: Laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices, insulation testers (meggers), voltage, current and power measurement devices and recorders, pressure flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, and electronic tachometers. The petitioner states that: (1) Application of the existing standard will result in a diminution of safety to the miners; (2) mining equipment by its nature, size, complexity, and location require that when disabled and requiring repair the equipment is nearly impossible and potentially unsafe to move or attempt to move to a location out by the last open crosscut in order to use non-permissible testing and diagnostic equipment; (3) all non-permissible electronic testing and diagnostic equipment used in or inby the last open crosscut will be examined by a qualified person as defined in 30 CFR 75.153 prior to use to ensure the equipment is being maintained in a safe operating condition; (4) examination results will be recorded in the weekly examination of electrical equipment book; (5) a qualified person will continuously monitor for methane immediately before and during the use of non-permissible electronic test and diagnostic equipment in or inby the last open crosscut; (6) if 1.0 percent or more of methane is detected while the non-permissible electronic testing and diagnostic equipment is being used, the equipment will be de-energized immediately and the non-permissible electronic equipment will be withdrawn outby the last open crosscut or to a minimum of 150 feet outby the pillar workings; (7) all hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined under 30 CFR 75.75.320; and (8) qualified personnel using the electronic test and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of electronic test and diagnostic equipment. The petitioner further states that the proposed methods and conditions will be included in the initial and annual refresher training and the approved Part 48 training plans, to ensure that miners are aware of the stipulations contained in this petition. Persons may review a complete description of petitioner's alternative method and procedures at the MSHA address listed in the notice. The petitioner asserts that the proposed

alternative method will in no way provide less than the same measure of protection than that afforded the miners under the existing standard.

Docket Number: M–2008–019–C.

Petitioner: White County Coal, LLC, 1525 County Road 1300 N, P.O. Box 457, Carmi, Illinois 62821.

Mine: Pattiki Mine, MSHA I.D. No. 11–03058, located in White County, Illinois.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(5)(i) and (ii) (Portable (trailing) cables and cords).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased for supplying power to permissible pumps. The petitioner states that: (1) This petition will only apply to trailing cables supplying three-phase 480-volt power for permissible pumps; (2) the maximum length of the 480-volt power for permissible pumps will be 4000 feet; (3) the 480-volt power for permissible pump trailing cables will not be smaller than #6 American Wire Gauge (AWG); (4) all circuit breakers used to protect #6 AWG trailing cables exceeding 500 feet in length will have an instantaneous trip unit calibrated to trip at 60 amperes; (5) the circuit breakers trip setting will be sealed or locked, and have permanent legible labels identifying the circuit breakers as being suitable for protecting #6 AWG cables; (6) replacement of instantaneous trip units used to protect #6 AWG trailing cables exceeding 500 feet in length will be calibrated to trip at 60 amperes and this setting will be sealed or locked; (7) all circuit breakers used to protect #2 AWG trailing cables exceeding 500 feet in length will have instantaneous trip units calibrated to trip at 150 amperes and the trip setting of these circuit breakers will be sealed or locked and will have permanent legible labels that will be maintained as legible to identify the circuit breaker as being suitable for protecting #2 AWG cables; (8) replacement of instantaneous trip units, used to protect #2 AWG trailing cables exceeding 500 feet in length will be calibrated to trip at 150 feet in length and calibrated to trip at 150 amperes and the setting will be sealed or locked; and (9) permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed or locked short-circuit protection device to warn the miners not to change or alter the short-circuit settings. Persons may review a complete description of petitioner's alternative method and procedures at the MSHA address listed in the notice. The petitioner states that the alternative method will not be implemented until miners designated to examine the integrity of the seals or locks verify the short-circuit settings, and proper procedures training has been provided for examining trailing cables for defects and damage. The training for the miners will include the following elements: (1) Training in mining methods and operating procedures for protecting the trailing cables against damage; (2) training in the proper procedures for examining the trailing cables to ensure safe operating conditions; (3) training in the hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; and (4) training on how to verify that interrupting device(s) protecting the trailing cable(s) are properly set and maintained. The petitioner further states that within 60 days after the petition is granted, revisions to the Part 48 training plan will be submitted to the District Manager for the area in which the mine is located. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to the miners as would be provided by the existing standard.

Dated: May 12, 2008.

Jack Powasnik,

Deputy Director, Office of Standards, Regulations, and Variances.

[FR Doc. E8–10943 Filed 5–15–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0002]

National Advisory Committee on Occupational Safety and Health (NACOSH); Announcement of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meeting.

SUMMARY: The National Advisory Committee on Occupational Safety and Health (NACOSH) will meet May 29, 2008, in Washington, DC.

DATES: *NACOSH meeting:* NACOSH will meet from 9 a.m. to 4 p.m., Thursday, May 29, 2008.

Submission of comments and requests to speak: Comments and requests to speak at the NACOSH meeting must be received by Thursday, May 22, 2008.

ADDRESSES: *NACOSH meeting:* NACOSH will meet in Room N–3437 A/B/C/D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Submission of comments and requests to speak: Comments and requests to speak at the NACOSH meeting, identified by docket number for this **Federal Register** notice (Docket No. OSHA–2008–0002), may be submitted by any of the following methods:

Electronically: You may submit materials, including attachments, electronically at: *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: Submit three copies of your submissions to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., *et.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2008–0002). Submissions in response to this notice, including personal information provided, will be posted without change at *http:www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birth dates. Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office, at the address above, for information about security procedures concerning submitting materials by hand delivery, express delivery, and messenger or courier service. For additional information on submitting comments and requests to speak, see the **SUPPLEMENTARY INFORMATION** section below.

Docket: To read or download submissions, go to *http://www.regulations.gov.* Although listed in the index, some documents (*e.g.*, copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection

and copying at the OSHA Docket Office at the address above.

FOR FURTHER INFORMATION CONTACT: *For general information:* Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1932; fax (202) 693–1641; e-mail *crawford.deborah@dol.gov*

For special accommodations for the NACOSH meeting: Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *chatmon.veneta@dol.gov.*

SUPPLEMENTARY INFORMATION: NACOSH will meet Thursday, May 29, 2008, in Washington, DC. All NACOSH meetings are open to the public.

Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 656) authorizes NACOSH to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in compliance with provisions in the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those laws (29 CFR 1912a, 41 CFR part 101–6 and 102–3).

The tentative agenda for the NACOSH meeting includes presentations on the following:

- Public and municipal employees;
- Global harmonization;
- Aging workforce;
- Motor vehicle safety; and
- Worklife Initiative.

NACOSH meetings are transcribed and detailed minutes of the meetings are prepared. Meeting transcripts and minutes are included in the official record of NACOSH meetings (Docket No OSHA–2008–0002).

Interested parties may submit a request to make an oral presentation to NACOSH by one of the methods listed in the **ADDRESSES** section above. The request must state the amount of time requested to speak, the interest represented (*e.g.*, organization name), if any, and a brief outline of the presentation. Requests to address NACOSH may be granted as time permits and at the discretion of the NACOSH chair.

Interested parties also may submit comments, including data and other information using any of the methods listed in the **ADDRESSES** section above. OSHA will provide all submissions to NACOSH members.

Individuals who need special accommodation to attend the NACOSH meeting should contact Veneta Chatmon, at the address above, at least seven days before the meeting.

Public Participation—Submissions and Access to Official Meeting Record

You may submit comments and requests to speak (1) electronically, (2) by facsimile, or (3) by hard copy. All submissions, including attachments and other materials, must identify the Agency name and the docket number for this notice (Docket No. OSHA–2008–20002). You may supplement electronic submissions by uploading documents electronically. If, instead, you wish to submit hard copies of supplementary documents, you must submit three copies to the OSHA Docket Office using the instructions in the **ADDRESSES** section above. The additional materials must clearly identify your electronic submission by name, date and docket number.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning submissions by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Meeting transcripts and minutes as well as submissions in response to this **Federal Register** notice are included in the official record of the NACOSH meeting (Docket No. OSHA–2008–0002). Submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birth dates. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (*e.g.*, copyrighted materials) are not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* Web site to make submissions and to access the docket and exhibits is available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate submissions and other documents in the docket. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, is also available on the OSHA Web page at *http://www.osha.gov.*

Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), 29 CFR 1912a, the Federal Advisory Committee Act (5 U.S.C. App. 2), and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 13th day of May 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–10995 Filed 5–15–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–044)]

NASA International Space Station Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NASA International Space Station Advisory Committee.

DATES: May 30, 2008, 1–1:30 p.m. Eastern Daylight Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Room 7U38, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Glen R. Asner, Office of External Relations, (202) 358–0903, National Aeronautics and Space Administration, Washington, DC 20546–0001.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. Five seats will be reserved for members of the press. The purpose of the meeting is to assess NASA and Roscosmos plans to support a six-person crew aboard the International Space Station, including transportation, crew rotation, training, and micro meteoroid and orbital debris shielding. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID,

before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees should provide identifying information in advance by contacting Glen Asner via e-mail at *glen.asner@nasa.gov* or by telephone at (202) 358–0903 by May 15, 2008.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: May 7, 2008.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8–10711 Filed 5–15–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 73 FR 12470, and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556.

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

SUPPLEMENTARY INFORMATION:

Title of Collection: 2008 Survey of Doctorate Recipients.

OMB Approval Number: 3145–0020.

Type of Request: Intent to seek approval to extend an information collection for three years.

1. Abstract

The Survey of Doctorate Recipients (SDR) has been conducted biennially since the 1970s. The 2008 SDR will consist of a sample of individuals under age 76 who have earned a science, engineering or health doctorate from a U.S. university. The purpose of this longitudinal study is to provide national estimates on the doctoral science, engineering and health workforce and changes in employment, education and demographic characteristics of that workforce. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering workforce.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to " * * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The SDR is designed to comply with these mandates by providing information on the supply and utilization of the nation's doctoral scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT data system, which produces national estimates of the size and characteristics of the country's science and engineering personnel. The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators.* A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

The National Opinion Research Center (NORC) at the University of Chicago will conduct the study for NSF. Data collection will begin in October 2008 by mail, Web survey and computer-assisted telephone interview. The survey will be collected in conformance with the Confidential Information Protection and Statistical Efficiency Act of 2002 and Privacy Act of 1974. The individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes.

2. Expected Respondents

A statistical sample of approximately 42,600 persons, identified as having a doctorate in a science, engineering or health field from a U.S. university will be contacted. The total response rate in 2006 was 79%.

3. Burden on the Public

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. Assuming an 80% response rate, NSF estimates that the total burden for the 2008 SDR will be 15,200 hours.

Dated: May 12, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8–10937 Filed 5–15–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 73 FR 12471, and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556.

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

SUPPLEMENTARY INFORMATION:

Title of Collection: 2008 National Survey of Recent College Graduates.

OMB Approval Number: 3145–0077.

Type of Request: Intent to seek approval to extend an information collection for three years.

1. Abstract

The National Survey of Recent College Graduates (NSRCG) has been conducted biennially since 1974. The 2008 NSRCG will consist of a sample of individuals who have recently completed bachelor's and master's degrees in science, engineering and health from U.S. institutions. The purpose of this study is to provide national estimates on the new entrants in the science and engineering workforce and to provide estimates on the characteristics of recent bachelor's and master's graduates with science, engineering, and health degrees. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering workforce.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to '' * * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government.'' The NSRCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's recent bachelor's and master's level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering personnel. The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators.* NSF publishes statistics from the survey in many reports, but primarily in the biennial series, *Characteristics of Recent Science and Engineering Graduates in the United States.* A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

Mathematica Policy Research will conduct the study under contract for NSF. Data are obtained by mail questionnaire, computer assisted telephone interview and web survey beginning October 2008. The survey will be collected in conformance with the Confidential Information Protection and Statistical Efficiency Act of 2002 and Privacy Act of 1974. The individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes.

2. Expected Respondents

A statistical sample of approximately 18,000 bachelor's and master's degree recipients in science, engineering, and health from the academic years 2006 and 2007 will be contacted in 2008. The total response rate in 2006 was 67%.

3. Burden on the Public

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. Assuming a 80% response rate, NSF estimates that the total burden for the 2008 NSRCG will be 6,100 hours.

Dated: May 12, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8–10938 Filed 5–15–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 73 FR 12470, and no substantial comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be

collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 7th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703–292–7556.

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

SUPPLEMENTARY INFORMATION:

Title of Collection: 2008 National Survey of College Graduates.

OMB Approval Number: 3145–0141.

Expiration Date of Approval: February 28, 2009.

Type of Request: Intent to seek approval to extend an information collection for three years.

1. Abstract

The National Survey of College Graduates (NSCG), formerly called the National Survey of Natural and Social Scientists and Engineers, has been conducted biennially since the 1970s. The 2008 NSCG will consist of a sample of individuals under age 76 who had responded to the 2006 NSCG, and the 2006 National Survey of Recent College Graduates who either have at least one bachelor's degree in a science and engineering (S&E) field, or have at least a bachelor's degree in a non-S&E field but work in an S&E occupation. The purpose of this longitudinal study is to provide national estimates on the science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering workforce.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to " * * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering personnel. The Foundation uses this information to prepare congressionally mandated reports such as *Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators.* A public release file of the SESTAT collected data, designed to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

The Bureau of the Census, as in the past, will conduct the study for NSF. Questionnaires will be mailed in October 2008 and nonrespondents to the mail questionnaire will be followed up by computer-assisted telephone interviewing. The survey will be collected in conformance with the Confidential Information Protection and Statistical Efficiency Act of 2002 and Privacy Act of 1974. The individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes.

2. Expected Respondents

A statistical sample of approximately 68,000 persons, identified as having at least one bachelor's degree in a science and engineering (S&E) field, or having at least a bachelor's degree in a non-S&E field but working in an S&E occupation, will be contacted. The total response rate in 2006 was 87%.

3. Burden on the Public

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. Assuming a 90% response rate, NSF estimates that the total burden for the 2008 NSCG will be 25,600 hours.

Dated: May 12, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8–10939 Filed 5–15–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–336 and 50–423]

Dominion Nuclear Connecticut, Inc.; Notice of Consideration of Issuance of Amendment to Renewed Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating License Nos. DPR–65 and NPF–49 issued to Dominion Nuclear Connecticut, Inc. (DNC, the licensee), for operation of the Millstone Power Station, Unit Nos. 2 (MPS2) and 3 (MPS3), located in New London County, Connecticut.

The proposed amendment would modify the Technical Specifications (TSs) and facility operating licenses in response to the application dated July 13, 2007, as supplemented by letters dated December 7, 2007, March 5 and 25, 2008, and April 28, 2008. The proposed amendment would establish more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope (CRE) in accordance with the Commission-approved TS Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, "Control Room Habitability." Additionally, the proposed amendment would change the "irradiated fuel movement" terminology and adopt "movement of recently irradiated fuel assemblies" terminology consistent with TSTF–448, Revision 3.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that

operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

(a) The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(b) The proposed change revising the TS from ''irradiated fuel movement'' to ''movement of recently irradiated fuel assemblies,'' referred to hereafter as the ''recently irradiated fuel'' change, is used to establish operational conditions on CRE emergency ventilation where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis. Inoperability of the CRE emergency ventilation system cannot increase the probability of a fuel handling accident (FHA) because the CRE emergency ventilation system is not considered an initiator to a FHA. The definition will allow fuel movement without the requirement of an operable CRE emergency ventilation system as long as fuel exceeds the decay time specified in the TS bases. As submitted to the NRC in the Response to Request for Additional Information, dated December 7, 2007, this decay time is 300 hours for MPS2 and MPS3 (350 hours for MPS3 [Stretch Power Uprate] SPU). The consequences of a FHA while moving non-recently irradiated fuel without an operable CRE emergency ventilation system remain less than the limits specified in 10 CFR 50.67. Other TS changes relating to ''recently irradiated fuel'' do not involve any accidents previously evaluated. Therefore the proposed ''recently irradiated fuel'' change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

(a) The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(b) The proposed ''recently irradiated fuel'' change does not affect nor create a different type of FHA. The FHA analyses continue to assume that all the iodine and noble gases that become airborne, escape and reach the CRE with no credit taken for deposition, filtration, or containment of the release. The proposed ''recently irradiated fuel'' change does not involve the addition or modification of equipment or the design of plant systems. The proposed ''recently irradiated fuel'' change does not alter the mitigating capability of the CRE emergency ventilation system after a FHA involving recently irradiated fuel. This change only permits the CRE emergency ventilation system to be inoperable for a FHA involving fuel that has decayed beyond the ''recently irradiated fuel'' definition in the TS Bases. For this consideration, the dose consequences to CR occupants remain below the limits required in 10 CFR 50.67. No new or different accidents result from defining the time after shutdown that CRE emergency ventilation system is required to be operable. Other TS changes relating to ''recently irradiated fuel'' do not create any accidents. Therefore, the proposed ''recently irradiated fuel'' change regarding recently irradiated fuel does not create the possibility of a new or different kind of accident from any previously analyzed.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

(a) The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(b) The proposed ''recently irradiated fuel'' change decay time limits on recently irradiated fuel are used to establish operational conditions on the CRE emergency ventilation system where specific activities represent situations where significant radioactive releases can be postulated. Safety margins and analytical conservatisms have been evaluated through the use of accepted methodology. Although CRE doses have slightly increased for all but the MPS3 [Alternate Source Term] AST, there was not a significant reduction in the margin of safety. These operational conditions are consistent with the design basis analysis and are established such that the radiological consequences to the CRE occupants are below the limits specified in 10 CFR 50.67. Other TS changes relating to ''recently irradiated fuel'' are not related to a margin of safety. Therefore, operations of the facility in accordance with the proposed ''recently irradiated fuel'' changes would not involve a significant reduction in the margin of safety.

Based upon the above assessment and the previous discussion of the amendment request, DNC concludes that the proposed change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the

Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E–Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a

docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737. Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, Participants are requested not to include copyrighted materials in their submissions.

For further details with respect to this license amendment application, see the application for amendment dated July 13, 2007, as supplemented by letters dated December 7, 2007, March 5 and 25, 2008, and April 28, 2008, which are available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of May 2008.

For the Nuclear Regulatory Commission.

John D. Hughey,

Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–11030 Filed 5–15–08; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of a currently approved collection of information: 3220–0099, Statement Regarding Contributions and Support. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under Section 2 of the Railroad Retirement Act, dependency on an employee for one-half support at the time of an employee's death can be a condition affecting entitlement to a survivor annuity and can affect the amount of both spouse and survivor annuities. One-half support is also a condition which may negate the public service pension offset in Tier I for a spouse or widow(er). The Railroad Retirement Board (RRB) utilizes Form G–134, Statement Regarding Contributions and Support, to secure information needed to adequately determine if the applicant meets the one-half support requirement. One form is completed by each respondent.

The RRB proposes no changes to Form G–134.

Previous Requests for Comments: The RRB has already published the initial

60-day notice (73 FR 2069 on January 11, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Statement Regarding Contributions and Support.

OMB Control Number: OMB 3220–0099.

Form(s) submitted: G–134.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act. One-half support is also a condition which may negate the public service pension offset in Tier I for a spouse or widow(er).

Changes Proposed: The RRB proposes no changes to Form G–134.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form(s): Completion time for Form G–134 is estimated at 147 minutes (with assistance) to 180 minutes (without assistance).

Estimated annual number of respondents: 100.

Total annual responses: 100.

Total annual reporting hours: 259.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–11038 Filed 5–15–08; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of a currently approved collection of information: 3220–0016, Certification of Termination of Service and Relinquishment of Rights. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Under Section 2(e)(2) of the Railroad Retirement Act (RRA), an age and service annuity, spouse annuity, or divorced spouse annuity cannot be paid unless the Railroad Retirement Board (RRB) has evidence that the applicant has ceased railroad employment and relinquished rights to return to the service of a railroad employer. The procedure pertaining to the relinquishment of rights by an annuity applicant is prescribed in 20 CFR 216.24. Under Section 2(f)(6) of the RRA, earnings deductions are required each month an annuitant works in certain nonrailroad employment termed Last Pre-Retirement Non-Railroad Employment.

Normally, the employee, spouse, or divorced spouse relinquish rights and certify that employment has ended as part of the annuity application process. However, this is not always the case. In limited circumstances, the RRB utilizes Form G–88, *Certification of Termination of Service and Relinquishment of Rights,* to obtain an applicant's report of termination of employment and relinquishment of rights. One response is required of each respondent. Responses are required to obtain or retain benefits. The RRB proposes no changes to Form G–88.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (73 FR 10074 on February 25, 2008) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Certification of Relinquishment of Rights.

OMB Control Number: OMB 3220–0016.

Form(s) submitted: G–88.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 2(e)(2) of the Railroad Retirement Act, the Railroad Retirement Board must have evidence that an annuitant for an age and service, spouse, or divorced spouse annuity has ceased railroad employment and relinquished their rights to return to the service of a railroad employer. The collection provides the means for obtaining this evidence.

Changes Proposed: The RRB proposes no changes to Form G–88.

The burden estimate for the ICR is as follows:

Estimated Completion Time for Form(s): Completion time for Form G–88 is estimated at 6 minutes.

Estimated annual number of respondents: 3,600.

Total annual responses: 3,600.

Total annual reporting hours: 360.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–11041 Filed 5–15–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57813; File No. SR–NSCC–2007–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Provide a New Alternative Investments Products Service

May 12, 2008.

I. Introduction

On July 17, 2007, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') and on February 19, 2008, amended proposed rule change SR–NSCC–2007–12 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 17, 2008.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

NSCC is establishing a new Alternative Investment Products service (''AIP Service''), a processing platform for alternative investment products such as hedge funds, funds of hedge funds, commodities pools, managed futures, and real estate investment trusts (''REITs'').

(1) Summary of AIP Service

The AIP Service will provide for processing of information relating to transactions in alternative investment products and for settlement of related payments (''AIP Payments''). It will facilitate, among other things, processing activities such as subscriptions and redemptions, distributions, position reporting, and account maintenance. Activities that will be supported by the AIP Service are more fully described below in the section titled ''Scope of AIP Service.''

Settlement of AIP Payments through NSCC will be done on a prefunded basis. NSCC will simply pass-through AIP Payments from AIP members to the contraside AIP members without netting or without guaranteeing payment in the event of contraside default. NSCC will not be liable to make payment to an AIP member in the event of a default in payment by the contraside AIP member. Settlement of AIP Payments (''AIP Settlement'') will be segregated from all other money settlements at NSCC. NSCC will have no exposure to credit risk as a result of the operation of the AIP Settlement. AIP Settlement is more fully described below in the section titled ''AIP Settlement.''

Participation in the AIP Service will be governed by NSCC's Rules and procedures applicable to the AIP Service. Each user of the AIP Service (''AIP Member'') will be required to enter into an AIP membership agreement with NSCC that will govern its use of the AIP Service. Entities eligible for membership will include entities subject to regulation under U.S. federal or state laws such as registered broker-dealers, investment advisers, banks, and insurance companies. Because of the unique processing and distribution features of alternative investment products and because NSCC will have no exposure to the credit risk of AIP Members and will have no liability to make payments in the event of an AIP Member's AIP Settlement default, entities that are not required to register under applicable U.S. federal or state law and entities organized under applicable law outside of the U.S. will also be eligible to become AIP Members. Membership in the AIP Service is more fully described below in the section titled ''AIP Members.''

NSCC developed the concept and functionality for the AIP Service at the request of and in consultation with industry participants, many of which were NSCC members using other NSCC services. Some of these interested parties committed to become pilot subscribers to the proposed AIP Service and committed to assist NSCC in funding the launch of the AIP Service. These parties are more fully described below in the section titled ''AIP Pilot Group.''

(2) Alternative Investment Products

Alternative investment products are typically illiquid, pooled investment products that are exempt from registration under the Security Act of 1933 and the Investment Company Act of 1940 and that are offered through private placements to high net worth individuals and institutional investors such as pension funds.

Alternative investment products may be placed and held by an end investor through a direct relationship with the issuer or manufacturer of an alternative investment product (called the ''AIP Manufacturer'' for purposes of NSCC Rules) or through an entity acting on behalf of an issuer or manufacturer. They may also be placed and held through a distribution channel such as a registered broker-dealer that facilitates transactions as a processing contraparty to the AIP Manufacturer (called the ''AIP Distributor'' for purposes of NSCC Rules). Alternative investment products are not generally traded in the secondary market. In this respect, the distribution for alternative investment products is similar to the distribution of mutual funds on NSCC's Fund/SERV system. Alternative investment products have processing characteristics and risk profiles that differ from those of mutual funds, and those differences have been taken into account and reflected in the functionality of the AIP Service and in NSCC Rules and procedures.

Increasingly, investors and their advisers are including alternative investment products as part of their portfolios. The alternative investment products market currently represents over $1 trillion in assets and continues to grow. Despite the large asset base, processing remains extremely manual using methods such as delivery of hard-copy documents, transmission of information by fax, e-mail messages and spreadsheets, and telephone calls. The lack of automation and standardized, centralized processing is inefficient, prolongs transaction processing time, results in high costs per transaction, and increases the likelihood of errors—factors that increase in importance as the volume of transactions in alternative investment products continues to increase as it has in recent years.

(3) AIP Pilot Group

Accordingly, several industry participants (many of which were members of NSCC) approached NSCC to explore whether NSCC could bring automation and standardization to the alternative investment product market analogous to that which NSCC's Mutual Fund Services has provided to the mutual fund market. Mutual funds and alternative investment products frequently share similar distribution channels and are frequently both included in an investor's portfolio for which a financial intermediary consolidates asset reporting and servicing.

NSCC solicited its members to assess industry interest. A pilot group of interested broker-dealers, alternative product manufacturers, and fund administrators was formed to determine the feasibility of NSCC providing such a service and if feasible to assist in the development of the business requirements and functional specifications for such a service. Some members of the pilot group committed to assist in the costs of development of such a service through payment of a

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 57461 (March 10, 2008), 73 FR 14294.

fixed amount that would be applied to their respective usage fees when the service was in production. Consistent with this commitment to support the costs developing and implementing the service, NSCC agreed to consult with the members of the pilot group in refining and enhancing the necessary functionality for the service. The functionality for the initial scope of the AIP Service is described below in the section titled ''Scope of AIP Service.''

(4) Eligible AIP Products

Alternative investment products that can be processed through NSCC's AIP Service (''Eligible AIP Products'') will initially include the types of products referenced above (*i.e.*, hedge funds, funds of hedge funds, commodities pools, managed futures, and REITs). Additional products could be added in the initial phase or from time to time as requested by industry participants and as approved by NSCC.[3] Eligible AIP Products may include those registered with the Commission and those not required to be registered. When an AIP Manufacturer submits an alternative investment product for processing through the AIP Service, pursuant to NSCC rules and procedures, it represents and warrants to NSCC that the offer and sale of the investment product complies with applicable law.

(5) AIP Members

The following types of entities will be eligible to become AIP Manufacturers or AIP Distributors:

(i) A broker-dealer registered under the Exchange Act or a non-US broker-dealer subject to regulation by the appropriate financial services regulator in its home jurisdiction;

(ii) A bank or trust company under supervision of federal or state banking authorities or a non-US bank subject to regulation in its home jurisdiction;

(iii) An investment company registered under the Investment Company Act or an issuer (structured as a fund or other pooled investment vehicle) that is not required to register thereunder;

(iv) An investment adviser as defined under the Investment Advisers Act of 1940 regardless of whether it is registered under the Investment Advisors Act or is exempt from registration;

(v) A commodity pool operator or commodity trading advisor as defined in the Commodity Exchange Act regardless of whether the commodity pool operator or commodity trading advisor is registered pursuant to the Commodity Exchange Act or is exempt from registration thereunder;

(vi) An insurance company regulated under state insurance law or a non-US insurance company subject to regulation by the appropriate insurance regulator in its home jurisdiction;

(vii) An AIP Manufacturer that is an entity engaged under contract to provide administrative services to one or more Eligible AIP Products; or

(viii) An entity that does not qualify as one of the above entities but that has demonstrated to the Board of Directors of NSCC that its business and capabilities are such that it could reasonably expect material benefit from direct access to the AIP Service.

Because AIP Settlement will be prefunded and because NSCC will be insulated from exposure to the credit risk of AIP Members and will have no liability to make payments in the event of an AIP Member's AIP Settlement default, there are no financial requirements for participation in the AIP Service. Members will be required to meet NSCC's operational requirements and general standards applicable to competency for membership and to meet such other requirements as NSCC may establish from time to time.[4]

(6) Scope of AIP Services

The AIP Service will support communication of information and settlement of AIP Payments between AIP Manufacturers and the AIP Distributors in order to facilitate the processing of subscriptions and purchases, tenders and redemptions, dividends and distributions, commissions and fees, position reporting, product information, account maintenance, automated transmission of imaged documents, and such other actions as NSCC may determine from time to time. The AIP Service will provide AIP Members with the ability to transmit data in connection with transactions whether the payments are made outside of NSCC or through the AIP Service.

As with all NSCC services, NSCC will not be responsible for the completeness or accuracy of data transmitted through the AIP Services or for any errors, omissions, or delays which may occur in the absence of gross negligence on the part of NSCC.

Fees for the use of the AIP Service have not yet been established and will be the subject of a subsequent proposed rule change filed under section 19(b)(3)(A) of the Act if this proposed rule filing is approved.

(7) AIP Settlement

AIP Settlement will be in same day funds over fedwire and will be segregated from all other settlement payments at NSCC. Unless otherwise provided by NSCC, AIP Members will be required to appoint a settling bank (''AIP Settling Bank'') for purposes of settlement similar to NSCC settlement procedures for its other money settlements.

NSCC will maintain credit balances and debit balances for each AIP Member to which NSCC will post gross credits and gross debits for settlement on the date designated for settlement by the AIP Member (''Settlement Date''). AIP Settlement will be on a gross bais meaning that the credit balance of an AIP Member will not be netted against its debit balance. If NSCC does not receive funds from an AIP Member in the amount of the debit balance by the requisite time on the Settlement Date, NSCC will reduce the corresponding settlement credit balances of the AIP Members that are the contrasides to the AIP Member that did not pay its gross debit balance. Nonpayment of a debit balance will not be deemed a payment default under NSCC Rules, but NSCC may establish fees for late payment or nonpayment and may establish a threshold number of instances of late payment or nonpayment which would result in other sanctions, including NSCC's ceasing to act for such an AIP Member.

After receipt of an AIP Member's debit balance from the AIP Member's AIP Settling Bank on Settlement Date, NSCC will transfer to the AIP Settling Bank(s) of the contraside AIP Member(s) the settlement credit balance(s). NSCC's payment will include gross credit balances which may have been reduced to reflect the reversal of any credits with respect to debit balance amounts that were not paid by a contraside AIP Member.

Use of NSCC's AIP Service will provide the alternative investment product industry with the ability to process transactions and to settle funds on a centralized, fully redundant platform that will provide more robust business continuity in the event of interruption to processing on a primary system, better audit trails on

[3] Due to the nature of alternative investment products, NSCC retains the right to refuse to process a specific product or type of product through the AIP Service or to require that a product or type of product no longer be processed through the AIP service if NSCC deems it to be in the interests of NSCC and its members to do so.

[4] NSCC's general standards applicable to competency are designed to screen for any action or condition of an applicant or member that could in the judgment of NSCC present undue risk to NSCC or its members.

transactions, lower costs, and fewer errors and delays than is currently the case.

Settlement on the basis of gross debits and gross credits without offsets insulates NSCC from any financial risks associated with Eligible AIP Products and AIP Members. Because NSCC's obligation to pay a credit balance will be conditioned upon receipt by NSCC of the debit balance from the contraside AIP Member, NSCC will not bear the risk that an AIP Member may default at settlement.

(8) AIP Document Transmission

The AIP Service will automate the transmission of imaged hard-copy documents (''paper workflow'') between AIP Manufacturers and AIP Distributors. The alternative investment industry has a number of investment instruments that are private or are traded outside of the normal processes and that require the exchange of documentation. It is not untypical for the parties to exchange up to forty pages of hard-copy documents. Subaccount documentation is typically sent for both initial and subsequent subscriptions, depending on the requirements of the alternative investment product, and for tender offers. The paper workflow component of the AIP Service will allow parties to scan and to convert documents to a file format such as portable document format (''PDF'') file for transmission with or without a pending transaction message.

(9) Proposed Changes to NSCC Rules

A new Rule 53, ''Alternative Investment Product Services and Members,'' will be added to NSCC's Rules, and additional confirming changes will be made elsewhere throughout NSCC's Rules as needed to provide consistency with the new Rule 53.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and to perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.[5] By facilitating the transmission of standardized information for alternative investment products on a centralized communications platform and by automating money settlements through a centralized facility in the same day funds, the AIP Service will provide increased efficiencies and reduced risks that are typically associated with the current alternative investment products processing. As such, the proposed changes will help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.[6]

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2007–12) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10968 Filed 5–15–08; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57806; File No. SR–Phlx–2008–34]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Consolidating Into a Single Rule Certain Requirements for Products Traded on the Exchange Pursuant to Unlisted Trading Privileges

May 9, 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 May 5, 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 the Exchange. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to consolidate into a single rule certain requirements for products traded on the Exchange pursuant to unlisted trading privileges (''UTP'') that have been established in various new products proposals previously approved by the Commission. The text of the proposed rule change is available at the Exchange's principal office, on the Exchange's Web site (*www.phlx.com*), 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, Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules to consolidate into a single rule certain requirements for products traded on the Exchange pursuant to UTP. Many of these products have been established in various new products proposals previously approved by the Commission. The Exchange proposes to amend Phlx Rule 803 to set forth a new rule, Phlx Rule 803(o), regarding the extension of UTP to an NMS stock that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to NMS stocks, unless otherwise noted. The Exchange will file with the Commission a Form 19b–4(e) with respect to any such security that is a ''new derivative securities product'' (''NDSP'') as defined in Rule 19b–4(e) under the Act.[3] In addition, any NDSP traded on the Exchange pursuant to proposed Phlx Rule 803(o) will be subject to the following criteria.

Proposed Phlx Rule 803(o)(2)(A) provides that the Exchange will distribute an information circular prior to the commencement of trading in such

[3] 17 CFR 240.19b–4(e).

NDSP which generally will include the same information as the information circular provided by the listing exchange, including: (1) The special risks of trading the NDSP; (2) the Exchange's rules that will apply to the NSDP, including the suitability rule; (3) information about dissemination of the value of the underlying assets or indexes; and (4) the risks of trading during the Pre Market and Post Market Sessions [4] due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value, the Indicative Optimized Portfolio Value, or other comparable estimate of the value of a share of the NDSP.

Proposed Phlx Rule 803(o)(2)(B) reminds members and member organizations that they are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the NDSP is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940, the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange shall inform its members and member organizations regarding the application of the provisions of this subparagraph to an NDSP by means of an information circular.

Phlx Rule 136(c)–(e) addresses trading halts in NDSPs traded on the Exchange pursuant to UTP. Phlx Rule 136(e)(1) would be amended to state that the term ''Derivative Securities Product'' is modified to ''New Derivative Securities Product'' and shall have the same meaning as new derivative securities product in Rule 803(o). The term ''New Derivative Securities Product'' is intended to include any products that are included in the current term ''Derivative Securities Product.'' In addition, throughout Phlx Rule 136(c)–(e), the term ''Derivative Securities Product'' is modified to ''New Derivative Securities Product'' to reflect the change in Phlx Rule 136(e)(1).

Phlx Rule 136(d)(1) provides that, if an NDSP begins trading on XLE in the Pre Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value,[5] XLE may continue to trade the NDSP for the remainder of the Pre Market Session. Phlx Rule 136(d)(2) provides that, during the Core Session,[6] if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, and the listing market halts trading in the NDSP, Phlx, upon notification by the listing market of a halt due to such temporary interruption, also shall immediately halt trading in the NDSP on XLE. Phlx 136(d)(3) provides that, if an applicable Required Value continues not to be calculated or widely disseminated after the close of the Core Session, XLE may trade the NDSP in the Post Market Session only if the listing market traded the NDSP until the close of its regular trading session without a halt. Further, if an applicable Required Value continues not to be calculated or widely disseminated as of the beginning of the Pre Market Session on the next trading day, XLE shall not commence trading of the NDSP in the Pre Market Session that day. If an interruption in the calculation or wide dissemination of an applicable Required Value continues, XLE may resume trading in the NDSP only if calculation and wide dissemination of the applicable Required Value resumes or trading in the NDSP resumes in the listing market. Finally, proposed Phlx Rule 136(d)(4) provides that, for an NDSP where a net asset value (and, in the case of managed fund share or actively managed exchange-traded fund, a ''disclosed portfolio'') is disseminated, Phlx will immediately halt trading in such security upon notification by the listing market that the net asset value and if applicable, such disclosed portfolio is not being disseminated to all market participants at the same time. Phlx may resume trading in the NDSP only when trading in the NDSP resumes on the listing market.

Proposed Phlx Rule 803(o)(2)(C) provides for restrictions for any XLE Participant registered as a Market Maker (''Restricted Market Maker'') in an NDSP that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, ''Reference Assets''). Specifically, proposed Phlx Rule 803(o)(2)(C)(i) provides that a Restricted Market Maker in an NDSP is prohibited from acting or registering as a market maker in any Reference Asset of that NDSP or any derivative instrument based on a Reference Asset of that NDSP (collectively, with Reference Assets, ''Related Instruments''). Proposed Phlx Rule 803(o)(2)(C)(ii) provides that a Restricted Market Maker shall, in a manner prescribed by Phlx, file with Phlx and keep current a list identifying any accounts (''Related Instrument Trading Accounts'') for which Related Instruments are traded: (1) In which the Restricted Market Maker holds an interest; (2) over which it has investment discretion; or (3) in which it shares in the profits and/or losses. In addition, a Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to Phlx as required by this rule. Proposed Phlx Rule 803(o)(2)(C)(iii) provides that, in addition to the existing obligations under Phlx rules regarding the production of books and records, a Restricted Market Maker shall, upon request by Phlx, make available to Phlx any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker for which Related Instruments are traded. Finally, proposed Phlx Rule 803(o)(2)(C)(iv) provides that a Restricted Market Maker shall not use any material nonpublic information in connection with trading a Related Instrument.

Lastly, Phlx represents that the Exchange's surveillance procedures for NDSPs traded on the Exchange pursuant to UTP will be similar to the procedures used for equity securities traded on the Exchange and will incorporate and rely upon existing Exchange surveillance systems. The Exchange will closely monitor activity in NDSPs traded on the Exchange pursuant to UTP and deter any potential improper trading activity. Proposed Phlx Rule 803(o)(2)(D) also provides that the Exchange will enter into a comprehensive surveillance sharing agreement (''CSSA'') with a market trading components of the index or portfolio on which the new derivative securities product is based to the same extent as the listing exchange's rules require the listing market to enter into a CSSA with such market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to

[4] *See* Phlx Rule 101, Supplementary Material .02(1), (3).

[5] Proposed Phlx 136(e)(2) states that '''Required Value' shall mean (1) the value of any security or index underlying a New Derivative Securities Product, and (2) the Intraday Indicative Value (as defined in Rule 803), or the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of a New Derivative Securities Product updated regularly during the trading day.''

[6] *See* Phlx Rule 101, Supplementary Material .02(2).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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, by providing for the trading of securities, including NDSPs, on Phlx pursuant to UTP, subject to consistent and reasonable standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2008–34 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.

All submissions should refer to File Number SR–Phlx–2008–34. 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–2008–34 and should be submitted on or before June 6, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

This proposal would consolidate into a single rule various provisions related to UTP that have been established in other new products proposals previously approved by the Commission.[10] The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. Phlx's proposal does not raise any novel issues, and accelerated approval thereof will expedite the trading of additional products by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–2008–34) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–10944 Filed 5–15–08; 8:45 am]

BILLING CODE 8010–01–P

[9] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] *See* ISE Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR–ISE–2007–99); NSX Rule 15.9 and Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008)(SR–NSX–2008–05); NYSE Arca Equities Rule 5.2(j)(6), Commentary .01(a)–(d) and Securities Exchange Act Release No. 54189 (July 21, 2006), 71 FR 43263 (July 31, 2006) (NYSEArca–2006–17) (in connection with Phlx Rule 803(o)(2)(C)).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before July 15, 2008.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Louis Cupp, New Markets Policy Analyst, Office of Investment, Small Business Administration, 409 3rd Street SW., 8th floor, Wash., DC 20416

FOR FURTHER INFORMATION CONTACT: Louis Cupp, New Market Policy Analyst, Office of Investment, 202–619–0511 *louis.cupp@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA uses the information collected for the New Market Venture Capital (NMVC) Program for proper oversight within the scope of the Small Business Act to access NMVC Program applicants and participants.

Title: ''New Markets Venture Capital (NMVC) Program Application Funding and Reporting.''

Description of Respondents: Programs Applications and participants, SSBIC receiving grants under the NMVC program.

Form Numbers: SF–269, 270, 272, 424 SBA–2184, 2185, 2216, 34, 2211, 2210.

Annual Responses: 1,131.

Annual Burden: 1,151.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–10940 Filed 5–15–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11206 and # 11207]

Arkansas Disaster Number AR–00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1751–DR), dated 03/28/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/18/2008 through 04/28/2008.

DATES: *Effective Date:* 04/29/2008.

Physical Loan Application Deadline Date: 06/27/2008.

EIDL Loan Application Deadline Date: 12/29/2008.

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: M. Mitravich, 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 03/28/2008 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 06/27/2008.

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. E8–10972 Filed 5–15–08; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Intent To Waive the Nonmanufacturer Rule for Other Aircraft Parts and Auxiliary Equipment Manufacturing (Drones, Miscellaneous Aircraft Accessories, and Components; Aircraft Launching Equipment).

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a request for a waiver of the Nonmanufacturer Rule for Other Aircraft Parts and Auxiliary Equipment Manufacturing (Drones, Miscellaneous Aircraft Accessories, and Components; Aircraft Launching Equipment).

According to the request, no small business manufacturers supply these classes of products to the Federal government. If granted, the waiver would allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: Comments and source information must be submitted June 2, 2008.

ADDRESSES: You may submit comments and source information to Pamela M. McClam, Program Analyst, U.S. Small Business Administration, Office of Government Contracting, 409 3rd Street, SW., Suite 8800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Pamela M. McClam, Program Analyst, by telephone at (202) 205–7408; by FAX at (202) 481–4783; or by e-mail at *Pamela.McClam@sba.gov*.

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS).

The SBA is currently processing a request to waive the Nonmanufacturer Rule for Other Aircraft Parts and Auxiliary Equipment Manufacturing (Drones, Miscellaneous Aircraft Accessories, and Components; Aircraft Launching Equipment). North American Industry Classification System (NAICS) code 336413, Product Service Codes 1550, 1680 and 1720.

The public is invited to comment or provide source information to SBA on the proposed waivers of the Nonmanufacturer Rule for this class of NAICS code within 15 days after date of publication in the **Federal Register**.

Dated: May 8, 2008.

Linda Korbol,

Acting Director, Office of Government Contracting.

[FR Doc. E8–10980 Filed 5–15–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6230]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Tsar and the President: Alexander II and Abraham Lincoln''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Tsar and the President: Alexander II and Abraham Lincoln'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also

determine that the exhibition or display of the exhibit objects at the Oshkosh Public Museum, Oshkosh, Wisconsin, from on or about July 12, 2008, until on or about October 19, 2008, and at the Union Station Kansas City Museum, Kansas City, Missouri, from on or about November 1, 2008, until on or about April 9, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 9, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–11046 Filed 5–15–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6231]

Determination Pursuant to the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008, related to the Provision of Military Assistance in Support of a Southern Sudan Security Sector Transformation Program

Pursuant to the authority vested in me by the laws of the United States, including Section 666(e) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, Pub. L. 110–161) and Delegation of Authority 245, I hereby determine that the provision to the Government of Southern Sudan of non-lethal military assistance, military education and training, and defense services controlled under the International Traffic in Arms Regulations is in the national interest of the United States, and that such assistance may be provided pursuant to section 666(e).

This determination shall be transmitted to the Congress and published in the **Federal Register**.

Dated: April 28, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–11062 Filed 5–15–08; 8:45 am]

BILLING CODE 4710–26–P

DEPARTMENT OF STATE

[Public Notice 6224]

Shipping Coordinating Committee; Notice of Subcommittee Meetings

Various subcommittees of the Shipping Coordinating Committee (SHC) will be holding public meetings in May 2008. Members of the public may attend these meetings up to the seating capacity of the rooms. Details for the meetings are provided in this notice.

I. Flag State Implementation

The SHC's Subcommittee on Flag State Implementation will conduct an open meeting at 1:30 p.m. on Thursday, May 22, 2008, in Room 2415 of the U.S. Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC, 20593. The primary purpose of the meeting is to prepare for the 16th Session of the International Maritime Organization (IMO) Sub-Committee on Flag State Implementation to be held at IMO Headquarters in London, United Kingdom from June 2 to June 6, 2008. The primary matters to be considered include:

—Responsibilities of Governments and measures to encourage flag State compliance;
—Port State Control (PSC) Guidelines on seafarers' working hours;
—Harmonization of port State control activities;
—Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
—Mandatory reports under International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
—Casualty statistics and investigations;
—Review of the Code for the Implementation of Mandatory IMO Instruments;
—Review of the Survey Guidelines under the Harmonized System of Survey and Certification (HSSC)—(resolution A.948(23));
—Development of guidelines on port State control under the 2004 Ballast Water Management (BWM) Convention;
—Port reception facilities-related issues;
—Illegal, unregulated and unreported (IUU) fishing and implementation of resolution A.925(22); and
—Consideration of International Association of Classification Societies (IACS) unified interpretations.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail message at least two days before the SHC subcommittee meeting to *Emanuel.J.TerminellaJr@uscg.mil*. Interested persons may seek additional information by writing to Mr. E.J. Terminella, Commandant (CG–5432), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001, by calling (202) 372–1239, or by e-mail.

II. IMO Administration and Budgeting; IMO Technical Cooperation

The SHC's Subcommittee on IMO Administration and Budgeting and the SHC's Subcommittee on IMO Technical Cooperation will conduct an open meeting at 10 a.m. on Tuesday, May 27, 2008 in Room 4420, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC, 20593. The purpose of this meeting will be to finalize preparations for the 100th Session of IMO's Council and the 58th Session of IMO's Technical Co-Operation Committee.

The 100th Session of IMO's Council is scheduled for 16–20 June, 2008 in London, United Kingdom. At the May 27th SHC subcommittee meeting, papers received and draft U.S. positions will be discussed. *The Council items of interest include:*

—Report of the Secretary-General on credentials;
—Strategy and planning;
—Program for change;
—Resource management;
—Voluntary IMO Member State Audit Scheme;
—Protection of vital shipping lanes;
—Consideration of the report of the Marine Environment Protection Committee;
—Consideration of the report of the Maritime Safety Committee;
—Consideration of the report of the Technical Co-operation Committee;
—Technical Co-operation Fund: Report on activities of the 2006–2007 programme;
—Report on the 29th Consultative Meeting of Contracting Parties to the London Convention 1972 and the 2nd Meeting of Contracting Parties to the 1996 Protocol to the London Convention;
—World Maritime University;
—IMO International Maritime Law Institute;

—External relations;
—Report on the status of the Convention and membership of the Organization;
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions; and
—Date and place of the next session of the Council.

The 58th Session of IMO's Technical Co-Operation (TC) Committee is scheduled for 10–12 June, 2008 in London, United Kingdom. At the May 27th SHC subcommittee meeting, papers received and the draft U.S. positions for TC 58 will be discussed. The TC Committee items of particular interest include:

—Integrated Technical Co-operation Programme (ITCP);
—Financing the Integrated Technical Co-operation Programme (ITCP);
—Impact assessment of technical co-operation activities during 2004–2007;
—Partnership for progress;
—Voluntary IMO Member State Audit Scheme;
—Programme on the integration of women in the maritime sector;
—Institutional development and fellowships;
—Work of other bodies and organizations;
—Rules of Procedure and Methods of Work of the TC Committee; and
—Election of the Chairman and Vice-Chairman for 2009.

Members of the public may attend the May 27th SHC subcommittee meeting up to the seating capacity of the room. Interested persons may seek information by writing to LCDR Jason Smith, Commandant (CG–5212), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1218, Washington, DC 20593–0001 or by calling (202) 372–1376.

Dated: May 9, 2008.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E8–11066 Filed 5–15–08; 8:45 am]

BILLING CODE 4710–09–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Public Comment and Public Hearings

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of public comment and public hearings.

SUMMARY: The Susquehanna River Basin Commission (SRBC) has released its draft revised Comprehensive Plan for a 90-day public review and comment period. To facilitate public comment, three public hearings will be held on the draft Plan. Details concerning the subject matter of the public hearings are contained in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Public Hearings—(1) July 8, 2008 at 2 p.m.; (2) July 9, 2008 at 2 p.m.; (3) July 10, 2008 at 10 a.m.; Comment Period—May 19, 2008 to August 18, 2008.

ADDRESSES: (1) July 8—Treadway Inn and Suites, 1100 State Route17C, Owego, NY 13827; (2) July 9—Days Inn and Conference Center, 50 Sheraton Drive, Danville, PA 17821; (3) July 10—Best Western Eden Resort, 222 Eden Road, Lancaster, PA 17603.

FOR FURTHER INFORMATION CONTACT: The draft Comprehensive Plan can be obtained from SRBC's Web site at *http://www.srbc.net/programs/planning/compplanfiles.asp* or by calling Deborah Dickey at (717) 238–0422, ext.301.

SUPPLEMENTARY INFORMATION: As noted in the summary, the purpose of the 90-day comment period is to receive comments on a proposed revision of the entire SRBC Comprehensive Plan and the hearings are being held in conjunction with the 90-day public comment period. The Comprehensive Plan provides an overarching framework for SRBC to manage and develop the basin's water resources and serves as a guide for all SRBC programs and activities, as required by the Susquehanna River Basin Compact, U.S. Public Law 91–575. It is further intended as a useful resource for SRBC's member jurisdictions, water resource managers, private sector interests and others in the basin. The Comprehensive Plan was last revised in 1987.

Opportunity To Appear and Comment

Interested parties may appear at the above hearings to offer written or oral comments to the Commission. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearings. Persons planning to comment at the public hearings should contact Richard A. Cairo, General Counsel, SRBC, 1721 N. Front Street, Harrisburg, PA 17102–2391; (717) 238–0423, Ext. 306 by July 1, 2008. Written comments will also be accepted during the 90-day comment period, which ends August 18, 2008, and may be sent to Mr. Cairo by mail, by e-mail at *Comp_Plan_Comments@srbc.net*, and by fax at (717) 238–2436.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR Parts 806, 807, and 808.

Dated: May 9, 2008.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E8–11044 Filed 5–15–08; 8:45 am]

BILLING CODE 7040–01–P

TENNESSEE VALLEY AUTHORITY

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 08–03).

TIME AND DATE: 2 p.m. CDT, May 19, 2008, The Marriott Shoals Hotel & Spa, 800 Cox Creek Parkway South, Florence, Alabama 35630.

Agenda

Old Business

Approval of minutes of April 3, 2008, Board Meeting.
1. Chairman's Report:
A. Governance Changes and Committee Assignments.
2. President's Report.
3. Report of the Operations, Environment, and Safety Committee:
A. Environmental Policy.
4. Report of the Ad Hoc Committee on Energy Efficiency, Demand Response, and Renewable Energy:
A. Energy Efficiency and Demand Response Guiding Principles;
B. Renewable and Clean Energy Guiding Principles.
5. Report of the Human Resources Committee.

FOR MORE INFORMATION: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 12, 2008.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. E8–10979 Filed 5–15–08; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–19]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before June 5, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0219 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Annette K. Kovite, (425) 227–1262, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356, or Frances Shaver, (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 12, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0219.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: § 26.11(g).

Description of Relief Sought: Boeing requests an exemption from the requirements to develop and make available to affected persons Electrical Wiring Interconnection System (EWIS) instructions for continued airworthiness for their Boeing Models 707 and 720 on the basis that these airplanes are not subject to an operational rule requiring an update of their maintenance programs. Boeing states that these airplanes are not currently operated commercially in the United States nor are they expected to operate in the United States in the future.

[FR Doc. E8–11011 Filed 5–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–23]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 5, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0081 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 12, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2008–0081.

Petitioner: NorthStar Trekking, LLC.

Section of 14 CFR Affected: 14 CFR 136.9(a) and 136.11(c)(2).

Description of Relief Sought: To allow NorthStar to conduct commercial air tour flights from Juneau, Alaska to the glaciers of the Juneau Icefield in NorthStar's helicopters with life preservers that are readily available for their intended use and easily accessible

to each occupant rather than the occupants wearing a life preserver and to not have helicopter floats.

[FR Doc. E8–11010 Filed 5–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; smart USA Distributor LLC

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of smart USA Distributor LLC (smart USA) in accordance with § 543.9(c)(2) of 49 CFR Part 543, *Exemption from the Theft Prevention Standard,* for the smart fortwo vehicle line beginning with model year (MY) 2009. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. smart USA is an authorized importer of smart brand vehicles manufactured by Daimler AG. smart USA requested confidential treatment for the information and attachments submitted in support of its petition. The agency will address smart USA's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated January 22, 2008, smart USA requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the smart USA fortwo vehicle line beginning with MY 2009. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one of its vehicle lines per year. smart USA's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

smart USA's petition provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the fortwo vehicle line. Although smart USA has requested confidential treatment of specific details of the system's operation, design, effectiveness and durability, NHTSA is, for the purposes of this petition, disclosing the following general information. smart USA will install its passive antitheft device as standard equipment on the vehicle line beginning with MY 2009. The antitheft device to be installed on the MY 2009 fortwo is equipped with an access code protected locking system and a transponder-based electronic immobilizer system. Features of the antitheft device will include an immobilizer consisting of an operational controller (SAM), transponder ignition keys and an engine control transponder reader unit as standard equipment. smart USA states that the vehicle key, SAM, engine control unit, fuel injection system and starter must all independently verify the presence of a code unique only to that vehicle. The smart USA fortwo will be installed with a malfunction warning symbol indicator on the instrument cluster. Additionally, the fortwo vehicle line will have an optional alarm system which will monitor all the doors and tailgate of the vehicle. The audible and visual alarms are activated when an unauthorized person attempts to enter or move the vehicle by unauthorized means.

smart USA stated that the immobilizer device prevents the engine from running unless a valid key is put into the ignition. Turning the valid key in the ignition is required to activate or deactivate the immobilizer. smart USA further stated that the immobilizer is armed immediately after the ignition is turned off regardless of whether the doors are opened or are locked.

There is currently no available theft rate data for the fortwo vehicle line as it is a new vehicle line beginning with MY 2008. smart USA provided Mercedes-Benz C-Line Chassis vehicle line as an example of a vehicle line subject to the parts-marking requirements (49 CFR part 541) that are equipped with ignition immobilizer systems as standard equipment. smart USA reported that NHTSA's theft rate for the C-Line Chassis vehicle for model years prior to 1998 (1994 through 1997) when an immobilizer was not installed as standard equipment resulted in an average theft rate of 1.6437. smart USA reported that, since the introduction of immobilizer systems as standard equipment on the C-Line Chassis vehicles, the average theft rate for MY's 1998 through 2004 is 1.4167, which is below the 1990/1991 median theft rate of 3.5826. smart USA stated that it believes the data indicate that the immobilizer system was effective in contributing to a reduction in theft rates for the C-Line Chassis at an average of 13.8 percent.

On the basis of this comparison, smart USA stated that the immobilizer in the fortwo vehicle line is functionally equivalent to the systems used in the Mercedes-Benz S-Line, E-Line and C-Line Chassis vehicles beginning with MY 2006, 2007 and 2008, respectively. smart USA has concluded that the proposed antitheft device is no less effective than those devices installed on lines for which NHTSA has already granted full exemption from the parts-marking requirements.

In addressing the specific content requirements of 543.6, smart USA provided information on the reliability and durability of its proposed device. Daimler AG has conducted tests based on its own specified standards for reliability and durability. smart USA provided a detailed list of the tests conducted, and believes that the device is reliable and durable since the device complied with its specified requirements for each test. Additionally, smart USA stated that it has obtained test approval according to regulatory requirements that are based on the testing parameters of the International Standards Organization regulations.

Based on the confidential material submitted by smart USA, the agency believes that the antitheft device for the fortwo vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). Based on the information smart USA provided about the device, the agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that smart USA has

provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information smart USA provided about its antitheft device.

For the foregoing reasons, the agency hereby grants in full smart USA's petition for exemption for the fortwo vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If smart USA decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if smart USA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 12, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–10983 Filed 5–15–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35138]

Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Control Exemption—The Louisiana and North West Railroad Company LLC

Patriot Rail, LLC (PRL) and its subsidiaries, Patriot Rail Holdings LLC (PRH) and Patriot Rail Corp. (Patriot) (collectively, applicants), jointly have filed a verified notice of exemption to permit PRL, PRH, and Patriot to acquire control of The Louisiana and North West Railroad Company LLC (L&NW) through Patriot's acquisition of 100% of the membership interests and/or substantially all of the assets of L&NW, pursuant to a Letter of Intent dated April 8, 2008.[1] Applicants state that a Purchase and Sale Agreement, as required by 49 CFR 1180.6(a)(7)(ii), will be entered prior to closing.

PRL is a noncarrier limited liability company that owns 51% of the equity interests in PRH, which, in turn, owns 100% of the stock of Patriot. Patriot is a noncarrier holding company that controls the following Class III railroads: (1) The Tennessee Southern Railroad Company, operating in Tennessee and Alabama; (2) Rarus Railway Company, operating in Montana; (3) Utah Central Railway Company, operating in Utah; and (4) Sacramento Valley Railroad, Inc., operating in California. LN&W, a Class III rail carrier, owns and operates an approximately 62.6-mile line of railroad between McNeil, AR, and Gibsland, LA, and leases a 6.5-mile line of railroad between McNeil and Magnolia, AR, from the Union Pacific Railroad Company. Pursuant to the transaction, Patriot will acquire direct control of L&NW. PRL and PRH, through their control of Patriot, will acquire indirect control of L&NW.

The transaction is scheduled to be consummated on or after the date that this notice becomes effective (which will occur on May 30, 2008).

Applicants state that: (i) The rail lines involved in this transaction do not connect with any rail lines now controlled, directly or indirectly, by PRL, PRH, or Patriot; (ii) the acquisition of control of L&NW by PRL, PRH, and Patriot is not part of a series of anticipated transactions that would connect any of these railroads with each other or any railroad in their corporate family; and (iii) this transaction does not involve a Class I carrier. Therefore, this transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 23, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35138, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 8, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–10848 Filed 5–15–08; 8:45 am]

BILLING CODE 4915–01–P

---

[1] A redacted version of the Letter of Intent was included with the notice. The full version of the Letter of Intent was concurrently filed under seal along with a motion for protective order. The motion for protective order is being addressed in a separate decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35134]

Squaw Creek Southern Railroad, Inc.—Lease and Operation Exemption—Central of Georgia Railroad Company

Squaw Creek Southern Railroad, Inc. (SCS), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to a lease agreement (Lease) reached with Central of Georgia Railroad Company (CGA), a wholly owned subsidiary of Norfolk Southern Railway Company (NSR), approximately 21.75 miles of rail line currently owned and operated by CGA, which is located between milepost F–53.75 at Machen, Jasper County, GA, and milepost F–75.5 at Madison, Morgan County, GA.

As a result of this transaction, the subject line will connect with CGA, CSX Transportation, Inc., and The Great Walton Railroad Company, Inc. According to SCS, the Lease specifically provides that there is no restriction on SCS's ability to interchange traffic with a connecting carrier other than CGA or NSR, but SCS explains that, under the Lease, it will receive rental credits and handling fees from CGA and NSR for cars interchanged with CGA.

The transaction is scheduled to become effective on June 1, 2008. The earliest this transaction can be consummated is May 30, 2008, the effective date of the exemption (30 days after the exemption is filed).

SCS certifies that its projected annual revenues as a result of this transaction will not exceed those that qualify it as a Class III rail carrier and will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by no later than May 23, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35134 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on Andrew P. Goldstein or John M. Cutler, Jr., McCarthy, Sweeney and Harkaway, P.C., 2175 K Street, NW., Suite 600, Washington, DC 20037.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 12, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–11002 Filed 5–15–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35127]

CSX Transportation, Inc.—Trackage Rights Exemption—Central Railroad of Indianapolis D/B/A Chicago, Fort Wayne and Eastern

Pursuant to a written trackage rights agreement, Central Railroad of Indianapolis d/b/a Chicago, Fort Wayne and Eastern (CFE) has agreed to grant limited non-exclusive overhead trackage rights to CSX Transportation, Inc. (CSXT) over a CFE line of railroad between milepost QF 191.28, at the west end of CSXT's Crestline Yard, at Crestline, OH, and milepost QFS 62.85 at Spore, OH,[1] via CFE's Ft. Wayne Line Subdivision, a distance of approximately 15.16 miles.[2]

The transaction may be consummated on or after May 31, 2008, the effective date of the exemption (30 days after the exemption was filed).[3]

Under the trackage rights agreement, CSXT's trains will move to and from the end points of the line in the interests of economy and efficiency, in connection with a transition in CSXT's operations, which transition will be implemented to improve traffic flow by avoiding time consuming and unnecessary interchange of loaded/empty unit trains between CFE, CSXT, and their respective crews. The trackage rights are limited to: (1) The months between and including April through November of each calendar year, and (2) a maximum of three loaded unit trains of crushed limestone and three empty unit trains per week, with a maximum of 60 cars per unit train. CSXT will not provide local service over the line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by May 23, 2008 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35127, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Steven C. Armbrust and John N. Booth, III, 500 Water Street, Suites J–150 and J–315, Jacksonville, FL 32202.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 9, 2008.

---

[1] CSXT's and CFE's trackage connects at the west end of CSXT's Crestline Yard. CSXT will operate along the Ft. Wayne Subdivision until it reaches milepost 200.05 near Bucyrus, OH. At that point, CSXT will enter the Spore Industrial Track, which begins at milepost QFS 69.24. CSXT will traverse the Spore Industrial Track to the end at Spore, milepost QFS 62.85, where the privately owned track of National Lime and Stone (NLS) begins. Loaded trains from NLS will be operated in the reverse move.

[2] A redacted draft version of the trackage rights agreement between CFE and CSXT was filed with the notice of exemption. The full draft version was concurrently filed under seal along with a motion for protective order, which will be addressed in a separate decision.

[3] CSXT incorrectly states that the effective date of this exemption is May 30, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–10874 Filed 5–15–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled ''Loans in Areas Having Special Flood Hazards (12 CFR 22).'' The OCC is also giving notice that it has submitted the collection to OMB for review.

DATES: You should submit written comments by: June 16, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0202, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0202, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Loans in Areas Having Special Flood Hazards—12 CFR 22.

OMB Control Number: 1557–0202.

Description: The regulation requires national banks to make disclosures and keep records regarding whether a property securing a loan is located in a special flood hazard area. This information collection is required by section 303(a) [1] and title V of the Riegle Community Development and Regulatory Improvement Act,[2] the National Flood Insurance Reform Act of 1994 amendments to the National Flood Insurance Act of 1968 [3] and the Flood Disaster Protection Act of 1973,[4] and by OCC regulations implementing those statutes. The information collection requirements are contained in 12 CFR part 22.

Section 22.6 requires a national bank to use and maintain a copy of the Standard Flood Hazard Determination Form developed by the Federal Emergency Management Agency (FEMA).

Section 22.7 requires a national bank or its loan servicer, if a borrower has not obtained flood insurance, to notify the borrower to obtain adequate flood insurance coverage or the bank or servicer will purchase flood insurance on the borrower's behalf.

Section 22.9 requires a national bank making, extending, increasing or renewing a loan secured by a building or a mobile home located in a special flood hazard area to advise the borrower and the loan servicer that the property is located in a special flood hazard area, provide a description of the flood insurance purchase requirements, and provide information regarding the availability of insurance under the National Flood Insurance Program and Federal assistance in the event of a declared Federal flood disaster. The bank must maintain a record of the borrower's and loan servicer's receipts of these notices.

Section 22.10 requires a national bank making, increasing, extending, renewing, selling or transferring a loan secured by a building or a mobile home located in a special flood hazard area to notify FEMA of the identity of the servicer, and of any change in servicers.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,300.

Estimated Total Annual Responses: 230,000.

Estimated Frequency of Response: On occasion.

Estimated Time per Respondent: 25.5 hours.

Estimated Total Annual Burden: 58,650 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

On March 10, 2008, the OCC published a notice in the **Federal Register** soliciting comments for 60 days on this information collection (73 FR 12799). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 12, 2008.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E8–10945 Filed 5–15–08; 8:45 am]

BILLING CODE 4810–33–P

[1] 12 U.S.C. 4804.

[2] 42 U.S.C. 4104(a).

[3] 12 U.S.C. 4104a and 4104b.

[4] 12 U.S.C. 4012a and 4106(b).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled, ''Management Official Interlocks—12 CFR 26.'' The OCC is also giving notice that it has submitted the collection to OMB for review.

DATES: You should submit written comments by June 16, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0196, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0196, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)–Management Official Interlocks—12 CFR 26.

OMB Control Number: 1557–0196.

Description: Under the Interlocks Act, two competing depository institutions generally may not share management officials. However, the OCC has legal authority to implement exemptions to this general prohibition. One such prohibition prohibits a management official of a depository organization from serving at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same relevant metropolitan statistical area and each depository organization has total assets of $20 million or more. Section 610 of the Financial Services Regulatory Relief Act of 2006 (12 U.S.C. 3202(1)) raises the total asset threshold of the depository organization to $50 million. The change was effective as of October 13, 2006 and adopted by the OCC on January 11, 2007. This submission covers this change.

The information is needed to prevent any management official interlock that would result in a monopoly or substantial lessening of competition. The OCC needs the information to grant exemptions that foster competition between unaffiliated institutions.

The OCC uses the information to ensure that a proposed management interlock is permitted under statute, is eligible for an exemption under section 2210(c) of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (12 U.S.C. 3207), and does not have an anticompetitive effect.

Type of Review: Regular Review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2.

Estimated Total Annual Responses: 2.

Estimated Frequency of Response: On occasion.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden: 4 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

On March 10, 2008, the OCC published a notice in the **Federal Register** soliciting comments for 60 days on this information collection (73 FR 12799). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 12, 2008.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. E8–10946 Filed 5–15–08; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held June 10, 2008.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on June 10, 2008, in Room 4200E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5609 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on June 10, 2008, in Room 4200E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of

fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

Sarah Hall Ingram,

Chief, Appeals.

[FR Doc. E8–10844 Filed 5–15–08; 8:45 am]

BILLING CODE 4830–01–M

Federal Register

Friday,
May 16, 2008

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

Medicare Program; Revisions to the Medicare Advantage and Prescription Drug Benefit Programs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

[CMS 4131–P]

RIN 0938–AP24

Medicare Program; Revisions to the Medicare Advantage and Prescription Drug Benefit Programs

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would make revisions to the Medicare Advantage (MA) program (Part C) and prescription drug benefit program (Part D). The regulation contains new regulatory provisions regarding special needs plans, medical savings accounts (MSA) plans, and cost-sharing for dual eligible enrollees in the MA program, the prescription drug payment and novation processes in the Part D program, and the enrollment, appeals, and marketing processes for both programs. We are proposing these changes based on lessons learned since 2006, the initial year of the prescription drug program and the revised MA program.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 15, 2008.

ADDRESSES: In commenting, please refer to file code CMS–4131–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

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–*4131*–P, P.O. Box 8016, 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–*4131*–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses: a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(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.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

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.

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 following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Special Needs Plans—LaVern Baty, 410–786–5480.

Contracts with MA Organizations—Chris McClintick, 410–786–4682.

Medicare Medical Savings Account Plans—Anne Manley, 410–786–1096.

Enrollment—Lynn Orlosky, 410–786–9064.

Payment—Frank Szeflinski, 303–844–7119.

Civil Money Penalties—Christine Reinhard, 410–786–2987.

Reconsiderations—

- John Scott, 410–786–3636.
- Kathryn McCann Smith, 410–786–7623.

Marketing—Elizabeth Jacob, 410–786–8658.

Change of Ownership—Scott Nelson, 410–786–1038.

Low-income Cost-Sharing—Christine Hinds, 410–786–4578.

Definitions related to the Part D drug benefit. Subparts F and G—Deondra Moseley, (410) 786–4577 or Meghan Elrington, (410) 786–8675. Subpart R—David Mlawsky, (410) 786–6851.

SUPPLEMENTARY INFORMATION:

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.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Overview of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) was enacted on December 8, 2003. The MMA established the Medicare prescription drug benefit program (Part D) and made revisions to the provisions in Medicare Part C, governing what is now called the Medicare Advantage (MA) program (formerly Medicare+Choice). The MMA directed that important aspects of the new Medicare prescription drug benefit program under Part D be similar to and coordinated with regulations for the MA program.

The MMA also directed implementation of the prescription drug benefit and revised MA program provisions by January 1, 2006. The final rules for the MA and Part D prescription drug programs appeared in the **Federal Register** on January 28, 2005 (70 FR 4588 through 4741 and 70 FR 4194 through 4585, respectively). Many of the provisions relating to applications, marketing, contracts, and the new bidding process, for the MA program, became effective on March 22, 2005, 60

days after publication of the rule, so that the requirements for both programs could be implemented by January 1, 2006. All of the provisions regarding the new Part D prescription drug program became effective on March 22, 2005.

As we have gained more experience with the MA program and the prescription drug benefit program, we are proposing to revise areas of both programs. Many of these revisions clarify existing policies or codify current guidance for both programs. We believe that these changes would help plans understand and comply with our policies for both programs and aid MA organizations and Part D plan sponsors in implementing their health care and prescription drug benefit plans.

B. Relevant Legislative History and Overview

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established a new ''Part C'' in the Medicare statute (sections 1851 through 1859 of the Social Security Act (the Act)) which provided for a Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Medicare Part B, except for most individuals with end-stage renal disease (ESRD), could elect to receive benefits either through the original Medicare program or an M+C plan, if one was offered where he or she lived. The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices.

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–111, amended the M+C provisions of the BBA. Further amendments were made to the M+C program by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted December 21, 2000.

As noted above, the MMA was enacted on December 8, 2003. Title I of the MMA added a new ''Part D'' to the Medicare statute (sections 1860D–1 through 1860D–42) creating the Medicare Prescription Drug Benefit Program, the most significant change to the Medicare program since its inception in 1965.

Sections 201 through 241 of Title II of the MMA made significant changes to the M+C program which was established by the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33). Title II of the MMA renamed the M+C program the MA program and included new payment and bidding provisions, new regional MA plans and special needs plans, reestablished authority for medical savings account (MSA) plans that had been provided in the BBA on a temporary basis, and other changes. Title I of the MMA created prescription drug benefits under Medicare Part D, and a new retiree drug subsidy program.

Both the MA and prescription drug benefit regulations were published separately, as proposed and final rules, though their development and publication were closely coordinated. On August 3, 2004, we published in the **Federal Register** proposed rules for the MA program (69 FR 46866 through 46977) and the prescription drug benefit program (69 FR 46632 through 46863). In response to public comments on the proposed rules, we made several revisions to the proposed policies for both programs. For further discussion of these revisions, see the respective final rules (70 FR 4588–4741) and (70 FR 4194–4585).

II. Provisions of the Proposed Regulations

In the sections that follow, we discuss the proposed changes to the regulations in parts 422 and 423 governing the MA and prescription drug benefit programs. Several of the proposed revisions and clarifications affect both programs. In our discussion, we note when a provision would affect both the MA and prescription drug benefit and include in section II C, a table comparing the proposed Part C and D program changes by specifying each issue and the sections of the Code of Federal Regulations that we propose to revise for both programs.

A. Proposed Changes to Part 422—Medicare Advantage Program

1. Special Needs Plans

The Congress first authorized special needs plans (SNP) to exclusively or disproportionately serve individuals with special needs. The three types of special needs individuals eligible for enrollment identified by the Congress include (1) institutionalized individuals (defined in 42 CFR 422.2 as an individual residing or expecting to reside for 90 days or longer in a long term care facility), (2) individuals entitled to medical assistance under a State plan under title XIX, and (3) other individuals with severe or disabling chronic conditions that would benefit from enrollment in a SNP.

The number of SNPs approved as of January 2008, is 787. This figure includes 442 dual eligible SNPs, 256 chronic care SNPs, and 89 institutional SNPs.

a. Ensuring Special Needs Plans Serve Primarily Special Needs Individuals (§ 422.4)

Section 231 of the MMA authorized MA organizations to offer a specialized MA plan that ''exclusively,'' or ''disproportionately,'' ''serves'' one of three categories of ''special needs'' individuals: Individuals dually-eligible for both Medicare and Medicaid, institutionalized individuals, and individuals with severe or disabling chronic conditions that the Secretary determines would benefit from enrollment in a SNP.

As noted above, the final rule implementing the MMA changes to the MA program, including these SNP provisions, was issued on January 28, 2005 (70 FR 4588). In the preamble to the proposed rule we proposed to interpret the term ''serves'' special needs individuals to mean markets to, and enrolls, special needs individuals. This was intended to permit an MA Plan with existing non-special needs enrollees to be designated a SNP if it prospectively, exclusively, or disproportionately enrolled special needs individuals.

We also proposed to interpret the statutory phrase, ''disproportionately serve[s] special needs individuals'' to refer to a SNP that enrolls special needs individuals in a proportion greater than such individuals exist in the area served by the plan (69 FR 46874). We asked for public comments regarding whether we should specify a percentage, such as 50 percent or more, as the minimum enrollment for a plan to be considered a SNP.

We did not receive any comments on this proposed provision. Therefore, in the final rule we established the disproportionate percentage methodology based on the test we proposed in the proposed rule, that is, a comparison of the proportion of the special needs individuals the plan enrolls relative to non-special needs enrollees and the proportion of special needs individuals in the plan's service area. If the proportion of special needs to non-special needs individuals being enrolled in the plan was greater than the proportion in the plan's service area, the plan could be considered a disproportionate share SNP. Our expectation was that only a limited number of non-special needs individuals would be likely to enroll in a SNP, such as spouses or children of special needs individuals who wish to enroll in the same MA plan as the spouse or parent. However, such plans may be attractive to other non-special needs individuals because they may

offer additional benefits beyond what Medicare covers. Also, individuals who are in the early stages of one of the chronic conditions covered by a disproportionate percentage, chronic care SNP may find the benefits or the network of participating specialists attractive.

Disproportionate percentage SNPs have proliferated since the implementation of the Part D program, due, in part, to the fact that both dual eligible individuals and institutionalized individuals are permitted to enroll in MA plans year round, and dual eligible and institutional SNPs are thus permitted to market year round. CMS' information shows that a significant number of the dual-eligible disproportionate percentage SNPs may have between 25 percent and 40 percent of their enrollment composed of non-special needs individuals. As a result, we are concerned that disproportionate percentage SNPs are enrolling significant numbers of non-special needs individuals, thus diluting the focus on serving those individuals with special needs.

Therefore, in order to ensure that existing and future SNPs maintain a primary focus on individuals with special needs, we are proposing to amend our regulations at § 422.4(a)(1)(iv)(B) to require that MA organizations offering SNPs limit new enrollment of non-special needs members to no more than 10 percent of new enrollees, and that 90 percent of new enrollees must be special needs individuals as defined in § 422.2. We believe this threshold would continue to allow the small number of non-SNP eligible spouses and children to continue to enroll in the same MA plan as their SNP eligible spouse or parent while ensuring that the SNP retains its focus on serving the special needs individuals for which it is specifically designed.

We understand that the majority of SNPs that currently enroll both special needs and non-special needs individuals have current enrollments of non-special needs individuals that exceed 10 percent. Because the new limitation only applies to new enrollees, these plans would be able to continue to serve their existing membership. Organizations offering disproportionate enrollment SNPs would not be permitted to enroll new non-special needs individuals, however, without first enrolling enough special needs individuals to ensure that the percentage of new non-special needs enrollees remains below 10 percent. Furthermore, as specified in § 422.4, those enrollees deemed continuously eligible per § 422.52(d) are considered special needs individuals for the purpose of determining the disproportionate percentage.

On an ongoing basis plans would need to monitor their enrollment to ensure that the 10 percent limit on new enrollments is met. This means that plans would need to monitor their enrollment to ensure that they were enrolling nine special needs individuals for every non-special needs individual to keep the ratio of new enrollees who were non-special needs individuals below 10 percent of new enrollees. MA organizations offering disproportionate SNPs would have to have a mechanism to ensure that a non-special needs individual could not enroll until a sufficient number of special needs individuals were enrolled to keep new enrollment of non-special needs individuals below 10 percent of new enrollments. For example, if a SNP receives completed enrollment elections from non-special needs individuals when such an enrollment would push the percentage of new enrollees over 10 percent, it could—(1) deny the enrollment due to the onset of the limit; or (2) place the enrollment on a waiting list to be processed after a sufficient number of special needs individuals have been enrolled. The plan would need to ensure that once enrollments are accepted for non-special needs individuals, that this is done on a non-discriminatory basis. We believe that this approach will encourage SNPs to design benefit packages that best serve the certain special needs populations for which they have been created.

We welcome comments on the appropriateness of the 10 percent standard for new enrollees, as well as the most effective and least burdensome ways for plans to monitor the proportions of new enrollments.

b. Ensuring Eligibility To Elect an MA Plan for Special Needs Individuals (§ 422.52)

In order to elect a SNP, an individual must meet the eligibility requirements for the specific type of SNP in which the individual wishes to enroll. For example, to enroll in a dual eligible SNP, the individual must be eligible for both Medicare and Medicaid. It is the responsibility of the MA organization offering the SNP to verify eligibility during the enrollment process.

We are concerned that some dual eligible SNPs may not be appropriately verifying Medicaid eligibility of applicants for enrollment, and therefore may be enrolling beneficiaries who are not eligible for both Medicare and Medicaid. Similarly, some chronic care SNPs may encounter difficulties having providers verify that the applicants have the condition(s) established as the focus of the chronic care SNP.

We propose to clarify in our regulations that MA organizations must establish a process to verify that potential SNP enrollees meet the SNP's specific eligibility requirements. While this issue is addressed, to some degree, in our manual guidance (section 20.11 of Chapter 2 of the Medicare Managed Care Manual), we believe that it is important to ensure that plans are aware of and meet their obligations to verify an applicant's eligibility prior to enrolling individuals in a SNP through rule making.

Therefore, we are proposing in § 422.52(g) that MA organizations offering SNPs for dual eligible beneficiaries establish a process approved by CMS to obtain information from the State about the applicant's Medicaid status and that this verification must be obtained prior to enrollment. This would likely require the SNP to enter into an agreement with the State to obtain this information on a routine and timely basis. We address the issue of a relationship with the State Medicaid program in the case of a dual eligible SNP in more detail in section II, below. Those organizations offering chronic care SNPs must attempt to obtain verifying information directly from the beneficiary's provider or the organization may use the disease-specific pre-qualification assessment questions developed by, and available from CMS (model language) as an alternative methodology.

In the 2008 MA application solicitation, we required SNPs to identify their processes for verifying a beneficiary's chronic condition before enrollment. Specifically, each applicant was required to contact the enrollee's physician to verify eligibility for the specific chronic condition SNP. We subsequently received industry comments that SNP staff sometimes experience significant delays in obtaining physician verification of the beneficiary's chronic condition and, as a consequence, there was delay in enrolling an eligible beneficiary.

In response to this information, we developed an additional option to facilitate chronic condition verification. In a May 31, 2007 memorandum, we notified chronic condition SNPs that they could develop a pre-enrollment qualification assessment tool to expedite verification that beneficiaries had the chronic condition for which they were enrolled (see *https://32.90.191.19/hpms/upload_area/NewsArchive_*

MassEmail/000001696/CHVHPMS%20v2.pdf). We simultaneously posted an example of an acceptable verification tool for coronary artery disease, congestive heart failure, and/or cerebrovascular accident (stroke) on HPMS (see *https://32.90.191.19/hpms/upload_area/NewsArchive_MassEmail/000001696/Draft%20pre-Qual%for%20chronic%20SNP%20verification%205%2007%20(2).pdf*).

The notification memorandum instructed SNPs to draft a verification tool, complete an attestation form asserting compliance with CMS conditions listed on the form, and to submit the tool to CMS for review and approval prior to using the tool. Concurrently, we collaborated with physician experts in chronic disease management to develop a series of questions related to several chronic conditions listed in HPMS as of January 2, 2007, representing potentially severe or disabling primary chronic conditions. Questions similar to the above example were developed for chronic obstructive pulmonary disease, diabetes mellitus, hypertension, chronic renal failure, depression, schizophrenia, bipolar disorder, dementia, and chronic alcohol or drug dependence.

Because chronic condition SNPs request CMS approval for their proposed pre-enrollment qualification assessment tools, we use the disease-specific questions to guide the SNP in the design of an appropriate tool. Having the additional option of using a pre-enrollment qualification assessment tool gives SNPs three means of meeting the verification requirement—written documentation from the beneficiary's former physician, telephonic confirmation by the beneficiary's former physician, or use of the verification tool followed by post-enrollment confirmation by any physician.

Similarly, organizations offering a SNP for institutionalized individuals must verify each enrollee's institutional status with the facility or appropriate State agency.

c. Model of Care (422.101(f))

As noted above, the MMA permitted MA organizations to offer care targeted to beneficiaries with special health care needs through SNPs. The MMA specified that a special needs individual was an individual who was ''institutionalized'' (as defined by the Secretary), is entitled to medical assistance under a State plan under title XIX (Medicaid), or ''meets such requirements as the Secretary may determine would benefit from enrollment'' in a SNP for individuals ''with severe or disabling chronic conditions.'' In order to ensure that SNPs are providing care targeted to such special needs beneficiaries, under our authority in section 1856(b)(1) of the Act to establish standards by regulation, we are proposing that SNPs develop a model of care specific to the special needs population they are serving. In order to more clearly establish and clarify delivery of care standards for SNPs and to codify standards which we have included in other CMS guidance and instructions (the 2008 and 2009 Call Letters, ''Special Needs Plan Solicitation [1]''), we propose to add new paragraph (f) to § 422.101. Section 422.101(f) would specify that SNPs must have networks with clinical expertise specific to the special needs population of the plan; use performance measures to evaluate models of care; and be able to coordinate and deliver care targeted to the frail/disabled, and those near the end of life based on appropriate protocols. We believe that these measures are critical to providing care to the types of special needs populations served by SNPs.

For example, CMS anticipates that a chronic condition SNP serving beneficiaries having severe or disabling diabetes mellitus would establish a provider network that afforded access to diabetes experts such as endocrinologists who consult on pharmacotherapy for the fragile diabetic, vitreo-retinal ophthalmologists for diabetic retinopathy management, nephrologists for diabetic nephropathy management, neurologists having diabetic neuropathy expertise, nurses having specialized training in diabetes education, and nutritionists with expertise in diabetic counseling.

The SNP might enroll diabetic beneficiaries who develop chronic renal failure related to diabetic nephropathy and require dialysis. The SNP might choose to contract or partner with these specialized diabetes experts and/or dialysis facilities, but, as a special needs plan targeting beneficiaries with specialized diabetic needs, the SNP is obligated to provide services to manage the expected disease-specific complications of a diabetic with severe or disabling disease progression. We also expect that the chronic condition SNP serving diabetic beneficiaries would develop diabetes-specific performance measures to evaluate its own systems, experts, and health outcomes related to its diabetes management.

The SNP's own internal quality assurance and performance improvement program should examine the effectiveness of its model of care for diabetes management. For example, if the SNPs provider network applied the American Diabetes Association's clinical practice guideline for reducing the risk of or slowing the progression of diabetic nephropathy by optimizing glucose control (see National Guidelines Clearinghouse, 2008; *http://www.guideline.gov/summary/summary.aspx?doc_id=10401*), an appropriate performance measure to evaluate management of diabetic beneficiaries would be a process measure to determine the percentage of diabetics having glycosylated hemoglobin (Hgb A_{1C}) measured in the last 6 months or an outcome measure to determine how many diabetics had an A_{1C} measuring less than 7 percent (see National Quality Measures Clearinghouse, 2008; *http://www.guideline.gov/browse/xrefnqmc.aspx*).

We recognize there is a broad range of chronic disease management systems and evidence-based clinical practice guidelines available to SNPs; consequently, we have deliberately guided SNPs toward the conceptual framework of a model of care without being prescriptive about the specific staff structure, provider network, clinical protocols, performance improvement, and communication systems. We also expect that within the target population of beneficiaries having severe or disabling diabetes mellitus, SNPs would have a subpopulation of diabetics who are frail, near the end of life, or disabled by other morbidities (for example, neurological disorders, mental disorders, etc.) that would need additional specialized benefits and services that should be addressed in the model of care. For example, the diabetic beneficiary with diabetic complications who is near the end of life might require assisted living or institutional services for which the SNP would develop different goals, expanded specialty services and facilities in their provider network, different performance measures, and additional protocols.

d. Dual Eligible SNPs and Arrangements With States (§ 422.107)

CMS' review of SNPs targeting beneficiaries eligible for both Medicare and Medicaid (dual eligible SNPs) over the past few years suggests to us that for such SNPs to serve this population of beneficiaries, a plan should have a documented relationship with the State Medicaid agency in the State in which its members reside. Dual eligible SNPs that have not established a working relationship with the State may

[1] The solicitation may be found at *http://www.cms.hhs.gov/SpecialNeedsPlans.*

encounter difficulties verifying eligibility for Medicaid prior to enrollment in a SNP and, thus, may inappropriately enroll members who are not eligible for Medicaid. Also, without an arrangement with the State, SNPs may not have the information necessary to guide beneficiaries to providers that can deliver both Medicare and Medicaid services. Further, Medicaid often provides additional health services not covered by Medicare through the SNP. Medicare Advantage organizations (MA organization) with no State relationship may be advising dual eligible members that services are not covered at all because they are not covered under the SNP, even though the services are covered through Medicaid. Consequently, if the MA organization is not aware of the benefits available to its members through other sources, such as Medicaid, it cannot ensure that the model of care it delivers offers adequate coordination of the essential services.

In order to ensure that beneficiaries are able to access essential services that are available through Medicaid in addition to those benefits available through the SNP, we propose to add a new § 422.107 which would require that an MA organization seeking to offer a SNP to serve the dual eligible population must have, at a minimum, a documented relationship, such as a contract, memorandum of understanding (MOU), data exchange agreement, or some other agreed upon arrangement with the State Medicaid agency for the State in which the dual eligible SNP is operating, in an effort to improve Medicare and Medicaid integration.

We propose in § 422.107(a) that all SNPs, whether entering the market or already established at the time these regulations become effective, must have in place a dual eligibility verification arrangement and information sharing on Medicaid providers and benefits.

We also propose in § 422.107(b) that within 3 years of the effective date of these regulations, all dual eligible SNPs already offering contracts are required to develop additional formal arrangements with States, and that new SNPs offering contracts after these regulations are effective, are required to have formal arrangements by their third contract year. CMS is allowing 3 years because we understand that it may take this long for contractual arrangements between the State and an MA plan to be implemented, particularly if Medicaid capitation and a request for proposal (RFP) are involved. We believe that by providing States and MA organizations with the maximum amount of flexibility for having a documented relationship, it will encourage States to actively participate in the development of integrated Medicare and Medicaid products with MA organizations. We believe 3 years is a reasonable and sufficient amount of time for MA organizations to develop documented arrangements with their respective States. We understand that some States are not yet ready to engage and participate in providing health care through MA organizations for their Medicaid-eligible populations and, are, therefore, providing a 3-year window for development and implementation.

Examples of additional formal arrangements range from documentation of a cooperative arrangement with the State to coordinate benefits to a contractual arrangement between the State Medicaid agency and the MA organization offering the SNP, under an RFP process, or under a Medicaid capitation arrangement.

e. Special Needs Plans and Other MA Plans With Dual Eligibles: Responsibility for Cost-Sharing (§ 422.504(g)(1))

CMS' review of MA plans serving dual eligible beneficiaries over the past few years has identified that a number of providers are charging the beneficiaries Medicare Parts A and B cost sharing that is the responsibility of the State. Additionally, many dual eligible enrollees are unclear about the Medicare and Medicaid rules and benefits. Some new enrollees have experienced interruptions in treatment, resulting in a negative impact on their health. These experiences suggest that additional requirements are needed to ensure that both providers and beneficiaries understand Medicare and Medicaid rules and that beneficiaries do not pay cost-sharing for which they are not responsible.

In order to protect beneficiaries and ensure that providers do not bill for cost-sharing that is not the beneficiary's responsibility, we have amended § 422.504(g)(1)(i) and (g)(1)(ii) to require that all MA organizations, including SNPs, with enrollees who are eligible for both Medicare and Medicaid specify in their contracts with providers that enrollees will not be held liable for Medicare Parts A and B cost sharing when the State is liable for the cost-sharing. We are proposing, therefore, that contracts with providers state that the provider will do this by either accepting the MA plan payment in full (§ 422.504(g)(1)(iii)(A)) or by billing the appropriate State source (for example, Medicaid) (§ 422.504(g)(1)(iii)(B)). Additionally, we are proposing that all MA organizations with enrollees eligible for both Medicare and Medicaid must inform providers of the Medicare and Medicaid benefits and rules for enrollees eligible for Medicare and Medicaid (§ 422.504(g)(1)(iii)).

Medicare Advantage organizations have flexibility in establishing arrangements with States. The arrangements could include discussing and identifying both the Medicare and Medicaid benefits and rules. A list of the services, as well as the rules applicable to enrollees eligible for Medicare and Medicaid could be disseminated to providers and updated as necessary. A contact person or liaison could be identified for each MA plan who could assist with questions and with the maintenance of current information.

2. MA MSA Transparency (§ 422.103(e))

As noted above, the MMA restored authority for ''Medical Savings Account'' (MSA) plans that had been provided for in the BBA on a temporary basis, but which expired without any such plan ever being offered. MSA plans are MA plans under which a portion of the total MA capitation rate is paid to the MA organization for a high-deductible policy that covers Medicare covered services after the high deductible is met. The remainder of the amount is placed into a savings account to be used to cover health care costs until the deductible is met. Any amounts not used in a given year accumulate for use in a future year.

As noted, under the original BBA authority, no MA organization chose to offer an MSA plan. We believe that this might be attributable in part to differences between the rules for MSA plans and the more popular health savings account (HSA) arrangements available for non-Medicare beneficiaries. In order to encourage the offering of MSA plans, and to test whether changing some rules would be beneficial, we initiated an ''MSA demonstration'' under which some MSA rules were waived. As part of this demonstration, we required that participating MA organizations provide MSA plan enrollees with cost and quality information that they could use to make informed choices as to where they would get health care.

Consistent with the best practices of HSAs and other high-deductible health plans, we propose in new § 422.103(e) to require that all MSA plans provide enrollees with information on the cost and quality of services as specified by CMS and provide information to CMS

on how they would provide this information to enrollees.[2]

The purpose of reporting cost/quality information to consumers, a practice known as ''transparency,'' is to permit plan enrollees to compare costs for specific services and to compare providers on cost and quality, with the high deductible acting as an added incentive to shop around. This proposal would implement a basic tenet of high-deductible health plans, the availability of useful cost and quality information to support consumer shopping.

We recognize that the Congress exempted MSA plans from the quality improvement program requirements in section 1852(e)(1) of the Act, and thus from the data collection and reporting requirements in section 1852(e)(3) of the Act. We would not, under this requirement, be mandating the same level of data collection required under those provisions, or the reporting of quality data to CMS. Rather, we are presuming that MA organizations in the business of offering an MSA product are committed to facilitating the intended benefits of this model—that consumers make informed choices as to their health care purchases during the deductible period and beyond. We would expect that such organizations already have mechanisms in place, in connection with their commercial lines of business, for providing their beneficiaries with cost or quality information. Indeed, in the case of Medicare participating providers, such information is available from CMS through our own transparency initiatives.

Our view that quality and cost information would be available, or reasonably accessible, to organizations in the business of offering an MSA plan is supported by the fact that the MA organizations participating in the MSA demonstration have agreed to provide the information to their enrollees. We invite public comments on this issue. We are proposing to revise the regulations to require that MA organizations offering MSA plans provide their enrollees with quality and cost information, to the extent available, concerning services in the plan's service area, and to report to CMS on its approach to providing this information. Below are examples of what a plan could be expected to address:

- How the organization will provide cost and quality information to enrollees, including screenshots for any Web-based tools used to meet this requirement.
- If they will use a Web-based product to meet this requirement, how they will provide this information to enrollees that do not have access to the Internet.
- How their organization will obtain information regarding cost and quality in the requested service area and whether this information will be personalized to the member.

B. Proposed Changes to Part 423—Medicare Prescription Drug Benefit Program

1. Passive Election for Full Benefit Dual Eligible Individuals Who Are Qualifying Covered Retirees (§ 423.34)

Section 1860D–1(b)(1)(C) of the Act, and implementing regulations at 42 CFR 423.34(d), require that CMS automatically enroll a full-benefit dual eligible (FBDE) individual who has (1) failed to enroll in a prescription drug plan (PDP) or MA–PD into a PDP at or below the premium subsidy amount, and, per the last sentence in section 1860D–1(b)(1)(C) of the Act, (2) has not declined Part D enrollment, into a PDP with a premium at or below the full premium subsidy amount. Further, the statute requires that if there is more than one such plan the ''Secretary shall enroll such an individual on a random basis among all such plans in the PDP region.'' Our general policy in implementing these provisions is to notify individuals in advance about their pending auto-enrollment, and to include in that notice information about other plans available to the individual and about how to decline Part D coverage, and thus opt out of the default enrollment process.

For the overwhelming majority of FBDE individuals, default enrollment into a PDP is a favorable outcome that ensures that they receive prescription drug coverage without costs for premiums and deductibles, and with only nominal costs for cost sharing. In many cases, the Part D enrollment is also beneficial for FBDE individuals with retiree coverage, since the Part D drug coverage may well be available at a lower cost than the coverage offered through the employer plan. However, for a significant number of FBDE individuals with drug coverage through an employer group plan—especially those with full health care coverage—automatic enrollment into a PDP can have serious and sometimes irreversible negative consequences, either for the beneficiary and/or for family members. For example, under the terms of a particular employer group plan, an individual may lose employer group retiree medical coverage upon enrollment in a Part D plan, or worse, an individual's automatic enrollment in a PDP can result not only in the individual's disenrollment from the employer plan, but the disenrollment of a spouse or other family member. Although we were aware of this possibility at the outset of the program, we had no information about the extent to which FBDE individuals might already have retiree group coverage, and we believed that to the extent there were individuals in this situation, the number would be extremely small. Thus, we did not make any special rules for this population.

Since January 2006, however, we have received a relatively small, but steady, series of complaints about this issue. We have attempted to work with employers to resolve individual situations as they arose, but have not had complete success. A recent survey of large employers found that 36 percent of the firms indicated retirees would lose all retiree medical coverage upon enrollment in a Part D plan, and another 32 percent specified the retirees would lose their employer group drug coverage only. More importantly, 82 percent of employers indicated that if a retiree is enrolled in a Medicare Part D plan, the spouse of that individual would not be allowed to keep employer sponsored coverage. Finally, 57 percent of the firms surveyed indicated that they would not allow retirees to rejoin the company's coverage in the future, should they decide that they would prefer the employer coverage to the Part D coverage in which they were automatically enrolled based on their FBDE status. (See December 13, 2006, Kaiser/Hewitt Survey Report of Large Employers at *http://www.kff.org/medicare/med121306nr.cfm*).

To address those concerns, we propose to revise § 423.34(d)(1), and add new § 423.34(d)(3), to establish a process under which FBDE individuals who we know to be enrolled in a qualifying employer group plan would be deemed to decline Part D coverage if, following a notice of their options, they do not indicate that they wish to receive it. As a result, these individuals would not be part of the group that is subject to default auto-enrollment. In order to ensure that only individuals with creditable employer coverage would be

[2] HSAs are health insurance plans with a high deductible and a savings account for the under 65 population and are administered by the U.S. Department of the Treasury. Medicare MSAs are a type of medical savings account, also with a high deductible and a savings account, designed for the Medicare population and are administered by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services. HSAs and MSAs are governed by different statutes, and while these health insurance products are similar in many ways, there are also important differences between them. For further information on HSAs, go to *http://www.ustreas.gov/offices/public-affairs/hsa/*.

included in this process, we would limit the applicability of this process to individuals enrolled in a plan for which CMS is paying an employer subsidy. Under our proposal, the individuals would be notified in advance by CMS of their prospective auto-enrollment, and of the need to carefully consider the possible repercussions of such an enrollment, including the impact that enrollment into Medicare Part D would have on their retiree coverage for themselves and other family members. We would recommend contacting the sponsor or administrator of the retiree group plan to discuss the effect of enrollment in Medicare Part D on the retiree coverage.

Individuals would further be informed that by taking no action, they will be deemed to have elected to decline enrollment into a Part D plan. We would further inform them that they could enroll in a Part D plan at any time in the future if they wish to do so, and that the enrollment could be made retroactive. Thus, absent a confirmation of the individual's desire to be auto-enrolled into a Part D plan, he or she would retain the employer group coverage.

In considering whether to adopt this approach, we recognized that to the extent that declining Part D could possibly have any negative consequences for FBDE individuals who are not auto-enrolled, CMS has the discretionary authority to make retroactive enrollment changes that can address such problems. In contrast, CMS has no authority to insist that a retiree plan sponsor allow individuals back into its plan should the retirees or their family members be adversely affected by auto enrollment. Given that 56 percent of employers surveyed have specifically stated that they would not allow re-enrollment into their retiree plans after an individual began Part D coverage, we believe that our proposed change in policy would clearly be in the best interests of the FBDE population with retiree coverage.

2. Part D Late Enrollment Penalty (§ 423.46)

Section 1860D–22(b) of the Act established a Part D late enrollment penalty (LEP) for beneficiaries who have a continuous period of 63 days or longer following the end of an individual's Part D initial enrollment period without creditable prescription drug coverage. This requirement is codified in § 423.46. Although § 423.46 describes which individuals would be subject to a penalty, it does not specify the role of the Part D plan in the LEP determination process. We have subsequently outlined plan responsibilities in our existing guidance (Chapter 4 of the Medicare Prescription Drug Benefit Manual) and now propose to clarify the general responsibilities of Part D plans in our regulations.

First, we would clarify under § 423.46(b) that Part D plans must obtain information on prior creditable coverage from all enrolled or enrolling beneficiaries. Under this process, plans first query CMS systems for previous plan enrollment information, which is a standard part of the beneficiary enrollment process. When no previous enrollment information exists, however, the process for obtaining creditable coverage information must also include plan interaction with the beneficiary. This is due in large part to the limited information available in CMS' systems about forms of creditable coverage other than Part D coverage or coverage through an employer group under the retiree drug subsidy (RDS). Therefore, it is critical that plans obtain historical creditable coverage information from the beneficiary in order to determine the number of uncovered months, if any, and retain any information collected concerning that determination (as specified under proposed § 423.46(d)).

The related requirement that we are proposing under § 423.46(b) is that plans must then report creditable coverage information in a manner specified by CMS. Specifically, that would entail reporting the number of uncovered months to CMS, which will then calculate the penalty and report the penalty back to the plan. The plan then notifies the beneficiary of the determination of the LEP amount and of their ability to request a reconsideration of this determination.

Thus, we would also establish under § 423.46(c) that, consistent with section 1860(D)–22(b)(6)(C) of the Act, individuals who are determined to have a late enrollment penalty, have the opportunity to ask for a reconsideration of this determination. (Note that existing § 423.56(g) briefly references the ability to ''apply to CMS'' when an individual believes that he or she was not adequately informed that his or her prescription drug coverage was not creditable, and we would cross-reference that section here.) We believe that the statute clearly intends that individuals have an opportunity to provide CMS, or an independent review entity acting under CMS' authority, with additional information related to prior prescription drug coverage in support of a request for reconsideration of a late enrollment penalty determination. While the statute expressly provides for this opportunity only with respect to an argument that proper notice was not given concerning whether existing coverage was creditable, we believe that the same rationale could apply to other arguments that the penalty should not apply (for example, an argument that the individual is eligible for a waiver of the penalty under a demonstration project).

Finally, we would specify that a beneficiary would not have the right to further review of the reconsideration decision of CMS, or the independent review entity acting under CMS' authority. CMS would, however, have the discretion to reopen, review, and revise such a decision.

3. Medicare Prescription Drug Benefit Program Definitions

These proposed clarifications to our policies associated with the Medicare Prescription Drug Benefit (also known as Medicare Part D) include refining our definitions related to what may be included in the drug costs Part D sponsors use as the basis for calculating beneficiary cost sharing, reporting drug costs to CMS for the purposes of reinsurance reconciliation and risk sharing, as well as submitting bids to CMS. We also propose a new definition for administrative costs in order to further clarify costs that must not be included in Part D drug costs. We also propose to create corollary definitions for drug cost reporting for purposes of the Retiree Drug Subsidy (RDS). We propose that the effective date of these changes be the effective date of a final rule with the exception of specific changes to the Part D definition of ''negotiated prices'', ''gross covered prescription drug costs'', and ''allowable risk corridor costs'' related to the use of pass-through versus lock-in prices, which we propose to be effective for coverage year 2010. We propose that the effective date of the RDS definitions be the effective date of a final rule, that is, for all plan years beginning after the effective date of a final rule.

a. Subpart C—Benefits and Beneficiary Protections (Definitions)

i. Incurred Costs

CMS is proposing to amend the definition of ''incurred costs'' to reflect our current policy that certain nominal co-payments assessed by manufacturer Patient Assistance Programs (PAPs) can be applied toward an enrollee's TrOOP balance or total drug spend (the accumulated total prices for covered Part D drugs paid by the plan or by or on behalf of the beneficiary). CMS allows PAPs to provide assistance for covered Part D drugs to Part D enrollees

outside the Part D benefit. This means that payments made by PAPs do not count toward enrollees' TrOOP or total drug spend balances. However, if a PAP requires their enrollees—including those enrolled in a Part D plan—to pay a nominal copayment when they fill a prescription for a covered Part D drug for which the PAP provides assistance, such amounts would count toward TrOOP if the plan is notified of the copayment. As explained in Appendix C of Chapter 14 (Coordination of Benefits) of the Prescription Drug Benefit Manual, these nominal PAP copayment amounts, when paid by or on behalf of a Part D enrollee, are applicable to the enrollee's TrOOP and total drug spend balances, provided the enrollee submits appropriate documentation to their Part D plan. We are proposing to revise the definition of incurred costs to clearly indicate that these nominal PAP copayments are included in incurred costs. This revision to the definition of ''incurred costs'' in § 423.100 is consistent with the proposed changes to the definition of ''gross covered prescription drug costs'', which has also been revised to ensure that these nominal PAP copayments are included in gross covered prescription drug costs and allowable reinsurance costs.

ii. Negotiated Prices

In the January 2005 final rule, CMS defined a number of terms related to drug prices and costs in order to identify the costs that should be used to calculate beneficiary cost sharing, to advance the beneficiary through the benefit, and to calculate final plan payments for reinsurance subsidies and risk sharing during payment reconciliation. For instance, under § 423.104(d)(2)(i), beneficiary cost sharing under the initial coverage limit is equal to 25 percent of ''actual cost.'' (70 FR 4535) ''Actual cost'' is defined in § 423.100 as ''the negotiated price for a covered Part D drug when the drug is purchased at a network pharmacy, and the usual and customary price when a beneficiary purchases the drug at an out-of-network pharmacy consistent with § 423.124(a).'' (70 FR 4533) And in § 423.100, the term ''negotiated prices'' is defined as ''prices for covered Part D drugs that (1) are available to beneficiaries at the point of sale at network pharmacies; (2) are reduced by those discounts, direct or indirect subsidies, rebates, other price concessions, and direct or indirect remunerations that the Part D sponsor has elected to pass through to Part D enrollees at the point of sale; and (3) includes any dispensing fees. (70 FR 4534)

Since that time, we have received questions over what we meant in this last definition when we refer to prices for covered Part D drugs that are available to beneficiaries at the point of sale. These questions are particularly important because beneficiary cost sharing is a function of the negotiated price, either directly as in coinsurance percentages of negotiated price, or indirectly, as copayments are ultimately tied to actuarial equivalence requirements based on negotiated prices. That is, for instance, the higher the negotiated prices, the higher the fixed copayments must be to result in actuarial equivalence to 25 percent in the aggregate in the initial coverage phase.

The ''total drug spend'' (the accumulated total prices for covered Part D drugs paid at the point of sale by the plan or by or on behalf of the beneficiary) also is a function of the negotiated price. Because the total drug spend is used to determine when the beneficiary advances through the deductible and the initial coverage phases of the Part D benefit, higher negotiated drug prices would cause the beneficiary to more quickly advance through those various phases. Accordingly, because higher negotiated prices would advance the beneficiary through the initial coverage phase more quickly, fewer prescriptions on average would be subsidized by the plan through the initial coverage period. Also, a beneficiary enrolled in basic prescription drug coverage (as defined in § 423.100) would reach the coverage gap more quickly, with the costs of covered Part D drugs purchased during the coverage gap phase financed entirely by the beneficiary. In addition, since beneficiaries must have access to the same negotiated prices during the coverage gap, the higher the negotiated prices, the higher the amounts paid by beneficiaries for drugs in the coverage gap may be. Similarly, higher negotiated prices would mean higher cost-sharing for beneficiaries who reach the catastrophic threshold. Because cost-sharing for the catastrophic phase of the benefit generally is based on 5 percent of the negotiated price, the higher the negotiated price, the higher the cost-sharing at the catastrophic level.

For all these same reasons, higher negotiated prices would mean higher low-income cost sharing subsidies paid by the government. Under the low-income cost sharing subsidy, low-income subsidy eligible individuals pay reduced or no cost sharing for covered Part D drugs. The government subsidizes the cost sharing for these beneficiaries by reimbursing Part D sponsors for the difference between the cost sharing paid by other Part D beneficiaries and the cost sharing paid by low-income subsidy (LIS) eligible individuals. Higher negotiated prices would result in higher cost sharing paid by other Part D beneficiaries and therefore, higher low-income cost sharing subsidies paid by the government to plan sponsors.

Because higher negotiated prices (and therefore, higher total drug spend) will advance beneficiaries through the phases of the Part D benefit more quickly, a greater number of beneficiaries will reach the catastrophic phase of the benefit more quickly. In addition, higher negotiated prices generally will result in higher covered Part D drug costs during the catastrophic phase. As a result, the reinsurance subsidies paid by the government to Part D sponsors to reimburse 80 percent of the covered Part D drug costs in the catastrophic phase of the benefit will be higher.

We believe that, in a competitive market, negotiated prices would be minimized when such prices are fully transparent to plan sponsors and beneficiaries. Consequently we strove to base our guidance on the principle of limiting drug costs to the price paid at the pharmacy (meaning any pharmacy, including mail-order pharmacies). In the preamble to the final rule we explained that drug costs include: Ingredient cost, dispensing fee, and sales tax (70 FR 4307). These three terms refer to specific fields on the automated prescription drug claim transaction that unambiguously indicate the amounts paid to the pharmacy by the payer of the claim. Therefore, by using these terms, CMS intended to refer to the price paid at the pharmacy and not the price paid by the sponsor to the PBM. Furthermore, the preamble states that ''we assume that ingredient cost and dispensing fee reflect point of sale price concessions in accordance with purchase contracts between plans (or their agents, such as PBMs) and pharmacies * * *'' (70 FR 4307), and that ingredient cost and dispensing fee reflect the drug price paid to the pharmacy and should reflect any point-of-sale price concessions from the pharmacy whether they are provided directly to the Part D sponsor or indirectly through a contracted PBM. Thus, we intended to define the term ''negotiated prices'' consistent with ''pass-through'' prices, an industry term for the prices negotiated with and paid to the pharmacy (either directly by the sponsor or indirectly through an

intermediary contracting organization, such as a PBM on the sponsor's behalf). With ''pass-through'' prices, the price paid to the pharmacy is the price passed on to the beneficiary (and, in the case of LIS eligible individuals, to the government) at the point of sale.

However, after publication of the final rule and issuance of clarifying subregulatory guidance in Spring 2006, CMS received comments that the notice and comment rulemaking had not made this point clearly, and that the regulation could be read to allow an alternative interpretation of the price paid at the point of sale. Specifically, these comments asserted that the ''lock-in'' pricing approach, a contract method by which a plan sponsor agrees to pay a PBM a set rate for a particular drug which may vary from the price that the PBM negotiates with each pharmacy, also met the definition of negotiated prices issued in the regulation.

Under such pricing arrangements, the PBM consistently bills one ''lock-in'' price negotiated with the sponsor for a drug (often based on AWP), but may pay a variety of different prices to network pharmacies based on varying contractual terms. On any given drug purchase, the PBM may pay the pharmacy a higher or lower price than it will bill the plan sponsor. However, we assume that the prices billed to the plan sponsor are generally higher than the prices paid to pharmacies, resulting in an overall net profit to the PBM that is marketed as a ''risk premium'' earned for shielding the sponsor from price variability. We welcome comments on this assumption. Commenters argued that these stable prices negotiated between the sponsor and the PBM also met the definition of ''negotiated prices'' in the final rule. (We note that when the negotiated price under the plan is the lock-in price, if the pharmacy price is lower than the lock-in price, the pharmacy will still have to collect the higher lock-in price from the beneficiary during the deductible or coverage gap and transfer the excess amount to the PBM in some manner.) On the basis of that alternative interpretation, some Part D sponsor applicants who held network contracts through PBMs based on the lock-in pricing methodology had based their 2006 and 2007 bids on such prices and could not renegotiate such contracts easily.

Consequently, on July 20, 2006, we issued guidance to Part D sponsors stating that, in order to minimize disruption to plan operations, for 2006 and 2007, sponsors could, at their option, base beneficiary cost-sharing not on the price ultimately charged by the pharmacy for the drug, but on the ''lock-in'' price, the price the sponsor paid a pharmacy benefit manager (PBM) or other intermediary for the drug. We also stated our intent to issue a proposed rule that would require a single approach for calculating beneficiary cost sharing, based upon the price ultimately received by the pharmacy.

Therefore, we are now proposing to amend our definition of negotiated prices. We previously proposed to amend this definition in the notice of proposed rule making, Policy and Technical Changes to the Medicare Prescription Drug Benefit (72 FR 29403–29423). However, we chose not to finalize this proposed definition in the final rule (73 FR 20486–20509) in order to further examine the impact of this proposal and provide the public with an additional opportunity to comment on this proposed definition. We have noted below, some of the impact concerns for which we would like to receive additional comments. We will consider the comments received on this definition from the previous proposed rule, as well as comments received on this proposed rule when determining whether to finalize this policy.

In order to resolve the confusion caused by the Prescription Drug Benefit final rule, we are now proposing to amend the definition of ''negotiated prices'' (to be effective for Part D contract year 2010) to require that Part D sponsors base beneficiary cost sharing on the price ultimately received by the pharmacy or other dispensing provider. Specifically, we are proposing to revise § 423.100 so that the first part of the definition of ''negotiated prices'' would state that negotiated prices are prices that the Part D sponsor (or other intermediary contracting organization) and the network dispensing pharmacy or other network dispensing provider have negotiated as the amount the network dispensing pharmacy or other network dispensing provider will receive, in total, for a particular drug. The term ''intermediary contracting organization'' refers to organizations such as pharmacy benefit managers (PBMs) that contract with plan sponsors to provide one or more of a variety of administrative functions on the sponsor's behalf, such as negotiating pharmacy contracts, negotiating rebates and other price concessions from manufacturers, and/or providing drug utilization management or benefit adjudication services. The term ''intermediary contracting organization'' encompasses any entity that contracts with a plan sponsor to pay pharmacies and other dispensers for Part D drugs provided to enrollees in the Part D sponsor's plan, regardless of whether the intermediary contracting organization negotiates pharmacy contracts on behalf of the plan sponsor or on its own behalf. Similarly, the term ''intermediary contracting organization'' encompasses any entity that negotiates rebates or other price concessions with manufacturers for Part D drugs provided to enrollees in the Part D sponsor's plan, regardless of whether the intermediary contracting organization negotiates the rebate agreements explicitly on behalf of the plan sponsor or on its own behalf. Our proposed definition excludes any differential between the price paid to the pharmacy and the price paid to the PBM or other intermediary contracting organization, and instead treats that differential (or ''risk premium'') as an administrative cost paid to the PBM or intermediary contracting organization rather than a drug cost under Part D. We elaborate on our reasons for in effect proposing to require the reporting of ''pass-through'' versus ''lock-in'' prices for Part D drug costs further below, as well as solicit specific comments from multiple stakeholders to ensure we are aware of all of the ramifications of this proposed policy.

We would also revise the definition of ''negotiated prices'' (to be effective upon the effective date of a final rule) to include prices for covered Part D drugs negotiated between the Part D sponsor (or its intermediary contracting organization) and other network dispensing providers. Part D sponsors can contract with providers other than a pharmacy to dispense covered Part D drugs, including them in their network. Therefore, we are amending the definition of negotiated prices to reflect the prices for covered Part D drugs that Part D sponsors (or their intermediary contracting organizations) negotiate with all their network dispensing providers.

There are a number of reasons for our decided preference for drug costs at the point of sale to be based on the amount actually paid to the pharmacy or other dispensing provider (hereafter referred to as pass-through prices) as opposed to the amount paid to the PBM (hereafter referred to as lock-in prices). In addition to our original intentions discussed above, we believe that continuing to allow lock-in prices to be used for Part D drug cost calculations and reporting could have several undesirable results:

1. Continued and probably increased cost shifting from the government to beneficiaries in the form of higher beneficiary out-of-pocket costs.
2. Interference with market competition among Part D sponsors.
3. Beneficiary confusion over actual drug prices.

4. Difficulties for pharmacies in explaining drug prices to customers and managing cash transfers to Part D sponsors or their intermediary contracting organizations contracting.

5. Continued and possibly increased risk of government risk-sharing on amounts that reflect administrative costs, contrary to Congressional intent to exclude risk-sharing on administrative expenses.

First, relative to pass-through prices, lock-in prices result in a cost shift from costs that would otherwise be fully paid by the government in the administrative cost portion of the basic Part D bid to costs that are paid in full or in part by the beneficiary. When the differential between the price paid to the pharmacy and the price paid to the PBM (sometimes referred to as ''PBM spread'' or ''risk premium'') is treated as a drug cost, this amount is part of the cost basis on which beneficiary cost sharing is calculated. This is true whether the beneficiary is paying the total cost of the drug in the deductible or coverage gap in a basic plan, or whether cost sharing is structured as coinsurance or fixed copayments. Again, cost sharing for the basic portion of a Part D plan is based on the negotiated prices either directly, as a coinsurance percentage of the price of the drug, or indirectly, as a fixed copayment derived to result in actuarial equivalence in the aggregate to 25 percent of drug prices in the initial coverage phase or to approximately 5 percent in the catastrophic phase. Thus, when the PBM spread is added to the pharmacy's price in computing cost sharing, a beneficiary who utilizes drugs will generally pay more in cost sharing both during covered benefit intervals and during deductible and coverage gap periods for their drugs when the negotiated price is based on lock-in prices rather than pass-through prices, resulting in higher out-of-pocket beneficiary costs.

On the other hand, when the PBM spread is included in the administrative costs component of a Part D sponsor's bid, as opposed to being treated as a drug cost, the plan sponsor's bid would be increased by these amounts. Consequently, all other things being equal, the sponsor's bid must be higher with pass-through prices than with lock-in prices. While a higher bid increases premiums for the beneficiary and direct subsidy costs for the government, because of the formulas for calculating premiums and federal subsidies, the beneficiary only pays about 25 percent of this increase and the government pays the other approximately 75 percent.

Under the pass-through approach, therefore, for the vast majority of beneficiaries who utilize Part D drugs, total out-of-pocket costs, including both monthly Part D premiums and cost-sharing, are lower because (1) cost sharing per script is lower, (2) the lower drug costs advance the beneficiary through the benefit more slowly—allowing in general more scripts to be subsidized in the initial coverage phase, and (3) increased premium costs are principally borne by the government. On net, beneficiaries who utilize their drug benefits pay less under our proposed approach with negotiated prices based on pass-through prices because out-of-pocket costs are 100% borne by the beneficiary, but the beneficiary only pays about 25% of the premium.

We believe that the beneficiary is almost always better off paying the lowest possible point-of-sale price. Under the lock-in pricing approach, the lock-in prices that some plan sponsors pay to their PBMs are uniform for each drug across multiple network pharmacies. However, the pass-through prices paid to the pharmacy may differ across network pharmacies. Some plan sponsors may perceive value in the use of lock-in prices to define negotiated prices, so that beneficiaries may pay a uniform price across different network pharmacies. However, we believe that beneficiaries receive no value from paying more for drugs in return for always paying a uniform stable price. Therefore, we believe that beneficiaries who utilize their Part D benefits are almost always better off paying pass-through prices under our proposed approach.

We would acknowledge that lower premiums at the expense of higher out-of-pocket costs would advantage some Part D beneficiaries who are non- or very low utilizers of the benefit. However, from a public policy perspective, lowering premiums at the expense of higher cost sharing for those individuals who most need the benefit dilutes the insurance principle. The drug purchases of those beneficiaries who utilize their Part D benefits are subsidized in part by those who do not need the benefit. Shifting costs from premiums to cost sharing would reduce the sharing of risk and drug costs across beneficiaries by shifting a greater percentage of the drug costs to those beneficiaries who use more prescription drugs and, therefore, pay more cost sharing. Those beneficiaries who use fewer prescription drugs are more likely to enroll in those plans with lower premiums and higher cost sharing (for example, plans that utilize lock-in prices). Less healthy beneficiaries who use more prescription drugs are more likely to enroll in those plans with higher premiums and lower cost sharing (for example, plans that use pass-through prices). This would distort the risk pool for those plans using pass-through prices and drive their costs up as those enrollees who use fewer prescription drugs disenroll from these plans as the premiums increase to reflect the increased percentage of high utilizers in the plan. It is important to create and maintain the most robust risk pool possible under the Medicare Part D to maintain program stability.

In addition, as noted in the preamble to the final rule: ''[a]s required under section 1860D–11(e)(2)(D)(i) of the Act and in § 423.272(b)(2), the structure of the benefit design (including cost sharing provisions and formulary design) must not be discriminatory; that is, it must not discourage enrollment by any Part D enrollee on the basis of health status * * *''. (70 FR 4297) We could argue that a business model and resulting benefit structure that by design shifts costs from the premium (where they would be paid by all) to cost sharing (where they are paid only by benefit utilizers) is per se discriminatory. That is, knowledgeable beneficiaries who seek to minimize their costs, who must utilize numerous prescription drugs due to their health status, and who use a tool such as the Medicare Prescription Drug Plan Finder, will determine that their costs are never minimized in a plan that bases their costs on lock-in prices—despite the lower premiums—and they will elect not to join that plan. Only non- or low utilizers of drug benefits might find that this plan design minimizes their costs. We believe that Congress instructed CMS to review Part D benefits in order to prohibit just this sort of systematically discriminatory benefit design.

All other things being equal then, requiring that those amounts paid by sponsors to PBMs (or other intermediary contracting organizations) that exceed the amounts paid by PBMs (or other intermediary contracting organizations) to pharmacies be treated as administrative costs will increase the basic Part D bid for any plan sponsor that previously based its bid on lock-in prices, shifting the majority of the cost to the direct subsidy paid by the government. This increase in direct subsidy costs will be offset somewhat by other payment impacts on the government. Specifically, reinsurance payments will be lower because (1) reinsurance payments are based on drug costs which generally are lower using

pass-through prices, and (2) fewer beneficiaries will reach catastrophic coverage due to being advanced through the earlier phases of the benefit more slowly. Similarly, the government's payments for low-income subsidy cost sharing are lower, as these subsidies are based on the negotiated price, which as previously explained is generally lower when based on pass-through prices. Thus, overall, a change from lock-in to pass-through prices will result in a cost shift from the beneficiaries who need the benefit most to the government—a result that, as we have argued above, is more consistent with the insurance principle.

The second potential undesirable impact of lock-in prices being used for drug cost calculations and reporting under the Part D program is interference with market competition. Because the cost shift from the government to the beneficiary lowers the bid, it also causes the plan's bid to become relatively more competitive. In fact, utilizing lock-in prices would seem to provide a competitive advantage to plans relative to other comparable plans that use pass-through prices, since premium levels are tied to the relationship between the plan's bid and the national average bid amount. The lower the plan's bid, the lower the difference between the plan's bid and the national average bid amount, and therefore, the lower the plan's premium. Unlike sponsors who do not use PBMs or other intermediary contracting organizations and, therefore, must base their bids on pass-through prices, those using PBMs or other intermediary contracting organizations currently have the option of using either pass-through or lock-in prices as the basis for their bids. This greater flexibility may give the latter a competitive advantage over the former. For example, to the extent a sponsor believes a lower premium rather than lower cost-sharing makes its plan more marketable, a sponsor contracting with a PBM may decide to use lock-in prices in its bid in order to obtain a lower premium. In addition, a sponsor may use lock-in prices in its bid to increase the likelihood that its plan qualifies for auto-enrollment and facilitated enrollment of LIS eligible individuals. To qualify for auto-enrollment and facilitated enrollment, a plan's premium must be at or below the low-income premium subsidy amount. A sponsor that is trying to gain or retain enrollment of LIS eligible individuals may use lock-in prices to help ensure that its plan premium is below the low-income premium subsidy amount. Thus, CMS believes that allowing both pricing approaches creates an unlevel playing field among plan sponsors. We specifically solicit comments on the economic and public policy impacts of this differential and whether it does in fact create an undesirable unlevel playing field, as between Part D sponsors contracting with PBMs or other intermediary contracting organizations and those who do not. We also solicit comments on each of the potential undesirable results discussed above.

In the discussion above we assumed that all other things were equal, and that the shift from one pricing methodology to the other only resulted in a shift in costs between the government and the beneficiary. That is, that overall program costs remained the same under either policy. However, arguments can be made that costs, both administrative as well as drug costs, would not remain the same under our proposed single approach.

On the one hand, some proponents of the lock-in approach have expressed concerns that our proposal would increase drug costs over time by discouraging the risk premium inherent in the lock-in method. They assert that the resultant pressure for downward pricing from the Part D sponsor would create a disincentive for PBMs to enter into this type of payment arrangement with plan sponsors. They are concerned that the demise of the lock-in model would result in the PBMs' role being reduced to one of mere claims processing agents with less incentive to negotiate the lowest possible network pharmacy discounts. In contrast, they contend that the risk premium incentives inherent in the lock-in approach result in significantly lower drug costs for Part D sponsors than other contractual models, and that the loss of this model could potentially increase drug costs, bids, premiums, and Part D program costs.

On the other hand, however, in response to the contention that the risk premium payment results in lower drug prices in the long run, we could argue that in a competitive market any potential increase in administrative fees (from transferring the spread to administrative costs) would be negotiated away in whole or in part with more perfect information in a fully transparent environment. For instance, our proposed changes do not prohibit Part D sponsors from contracting with PBMs for drug utilization management services and paying administrative incentive fees for reducing costs through such services. In a transparent environment, plans would be negotiating on lowest possible drug prices, as well as minimizing administrative costs, and these would be more clearly comparable among PBMs (or other intermediaries). It is not clear to us why PBMs would compete any less vigorously for the same level of profits included in administrative fees, or for the lowest possible network pharmacy negotiated prices in order to earn those fees. Therefore, we are more persuaded by the counterargument that the PBM spread is in fact an additional profit earned due to asymmetry in market information that might well be reduced with more transparency in pricing. Under these assumptions, leaving the additional costs in administrative costs would reduce bids, premiums, and total Part D program costs over time.

Moreover, nothing in our proposed rule prohibits the payment of a risk premium to the PBM by the plan sponsor. Our proposed changes to the definition of negotiated prices do not interfere with the negotiations between Part D sponsors, pharmacy benefit managers, and pharmacies for covered Part D drugs. Rather, we propose that Part D sponsors would be required to use the price ultimately received by the pharmacy (or other dispensing provider) as the basis for calculating beneficiary cost sharing, total drug spend, and cost reporting to CMS. We do not require a Part D sponsor to use a particular pricing approach in its contracting agreements with PBMs. Part D sponsors may continue to use either the pass-through or lock-in pricing approach when contracting with a PBM—provided that beneficiary cost sharing, total drug spend, and the drug costs reported to us are based on the price ultimately received by the pharmacy. To the extent that Part D sponsors believe that the lock-in pricing contracting approach reduces their total costs, we expect that they will continue to use it when contracting with a PBM. We solicit comments on whether Part D sponsors and PBMs would use the lock-in pricing contracting approach in certain cases if the proposed policy were finalized.

We solicit comments from plan sponsors, other industry contracting experts, benefit consultants, and market analysts on the impact of our proposed change on aggregate pricing exhibited between plans and PBMs, as well as on the prevalence of and trends in lock-in pricing arrangements between plan sponsors and PBMs. In particular, we are soliciting comments on whether lock-in pricing truly offers benefits to sponsors equal to the value of the risk premium, or whether the existence of the risk premium is in effect a higher

price exacted from sponsors without the leverage to negotiate lower costs or due to asymmetry in market information as between PBMs and sponsors. We also solicit comments on whether stakeholders consider the proposed definition of ''negotiated prices'' to represent strictly a change in reporting requirements for Part D plan sponsors. We solicit comments on how contractual relationships and requirements may change between and among Part D plan sponsors and their first-tier, downstream, and related entities.

Our third concern with lock-in pricing involves the confusion that may be caused for beneficiaries whenever they see the difference between the price paid to the pharmacy and the price charged to the plan sponsor. While we understand that the intent is for the beneficiary to see the same information on drug prices on the pharmacy's receipt, on the Medicare Prescription Drug Plan Finder, and on the plan's Explanation of Benefits (EOB), this does not always happen. Under lock-in pricing, the EOB which the beneficiary receives from the plan may currently reflect the price the plan sponsor pays its PBM (the lock-in price) instead of the price negotiated with the pharmacy. We understand that pharmacies generally do not customize receipts for payers, and those that print total amounts paid on their receipts will not always be able to alter those amounts to correspond to the prices the plan sponsor pays its PBM. Even for cases in which the pharmacy does not print out total amounts received on its receipt, the same issues may occur in the deductible or coverage gap when the patient pay amount may equal the lock-in price, which could be higher than the price paid to the pharmacy. Whenever the pharmacy receipt does display the pharmacy's price, the beneficiary may see the discrepancy in price between the receipt and the plan's EOB. Even when receipts display the plan's price, the beneficiary may see discrepancies between the price they pay and pharmacy advertised specials or prices offered to a friend and believe the price they paid was wrong. Beneficiaries may perceive these discrepancies in drug prices as fraud and place complaints or inquiries. Reviewing and addressing these types of inquiries serves to increase administrative costs for pharmacies, plan sponsors, and the government. Moreover, if pharmacies were to err and charge pass-through prices during the coverage gap instead of the lock-in prices, actual beneficiary true out-of-pocket (TrOOP) expenses might diverge from the amounts reported on the plan's EOB, possibly leading to an overstatement of TrOOP costs in plan (PBM) claims payment systems. We solicit comments, particularly from beneficiary advocates, on the extent to which they are hearing of beneficiary concerns around such discrepancies.

The fourth potential undesirable impact concerns difficulties that may be caused for pharmacies in explaining apparent price discrepancies to customers, as well as the additional administrative burden of managing the resulting cash transfers between the beneficiary and the PBM. If a beneficiary notices an apparent price discrepancy as described above, the beneficiary is likely to ask the pharmacy for an explanation. We believe the pharmacy must then expend scarce staff resources on explaining the discrepancy and managing the beneficiary's reaction. Moreover, whenever the additional amount that exceeds the price negotiated between the PBM and pharmacy has been collected from the beneficiary, the pharmacy must have in place and manage accounting processes to transfer the additional amounts to the PBM and support ongoing reconciliations. We solicit comments from both chain and independent pharmacies on the extent to which these or any other impacts from lock-in prices have been incurred.

We are not aware of any advantages to pharmacies from lock-in prices. We have heard the argument that the proposed changes would have a disproportionately negative impact on small independent pharmacies. Under the lock-in pricing approach, Part D sponsors negotiate a single rate with their contracted PBMs and, therefore, are generally not aware of the different rates paid by the PBMs to each pharmacy. This argument suggests that under the revised definition of negotiated prices, Part D sponsors would be made aware of the different rates paid to each pharmacy, and, in particular, Part D sponsors would become aware of higher-cost pharmacy providers, which are generally small independent pharmacies that are unable to offer the more aggressive drug prices provided by retail chain pharmacies. This argument presupposes that in their efforts to reduce drug costs, Part D sponsors would then remove these higher-cost pharmacies from their pharmacy networks, leading to a significant impact on the financial viability of these pharmacies.

We are not persuaded by this argument at this time. First, as discussed above, we believe that under the revised definition of negotiated prices Part D sponsors may still use either the pass-through or lock-in pricing approach in their contracts with PBMs if sponsors continue to place value on being shielded from price variations. Moreover, even under transparent pricing arrangements, we expect that Part D sponsors would continue to contract with small independent pharmacies in order to satisfy our pharmacy access standards as outlined in § 423.120. In order to meet these rigorous pharmacy access standards, Part D sponsors would have to continue to contract with many if not most of these independent pharmacies and include them in their pharmacy networks. Moreover, we expect that Part D sponsors likely will determine that the proportion of their utilization that comes through independent pharmacies with the leverage to negotiate significantly higher reimbursements is generally not sufficiently large to significantly affect aggregate drug costs. Therefore, we are unable to conclude at this time that these proposed changes would have any adverse effects on pharmacies, including small independent pharmacies, and we solicit comments from all pharmacies on this question.

The final potential undesirable impact we attribute to lock-in prices is the continued, and possibly increased, risk of government risk-sharing on costs that may be better treated as administrative expenses. The payment of risk-sharing on those portions of ''drug costs'' under the lock-in methodology that are retained by the PBM or other intermediary appears contrary to Congressional intent. For both reinsurance and risk-sharing payments CMS is required to exclude ''administrative costs'' from the calculations. In accordance with § 1860D–15(b)(2) of the statute, and as codified at § 423.308, ''allowable reinsurance costs'' are defined as a subset of ''gross covered prescription drug costs.'' ''Gross covered prescription drug costs'' are defined as '' * * * the costs incurred under the plan, not including administrative costs, but including costs directly related to the dispensing of covered Part D drugs * * *'' (§ 1860D–15(b)(3)). Similarly, definitions of ''allowable risk corridor costs'', at § 1860D–15(e)(1)(B) of the statute and § 423.308 of the regulations, exclude administrative costs. We believe that any ''risk premium'' paid to the PBM to smooth actual drug expenses should be considered an administrative contracting cost, or like a drug utilization management program cost to

the plan. Thus, in order to exclude those amounts from being included in the reinsurance and risk-sharing calculations, we believe CMS should treat these costs as administrative costs and not as drug costs.

While there is no question that reinsurance costs to the government increase with lock-in prices (since per claim drug costs are higher and a greater number of beneficiaries will reach catastrophic coverage), it is possible that there would be no significant difference between the lock-in and pass-through prices with respect to government risk sharing *under certain constraints*. Very simply stated, risk sharing involves comparing the sum of drug costs anticipated in the plan sponsor's bid and paid prospectively through government and beneficiary monthly premiums (the ''target amount'') to the drug costs actually incurred, with the government then paying or recouping a portion of the difference. As long as the drug costs reflected in the bid are calculated in precisely the same way as the drug costs submitted to CMS as allowable costs, the target amount and the allowable costs will rise together. However, if a plan were to submit bids based on one level of PBM spread, but then submit costs to CMS reflecting a higher level of spread, then the difference between prospective costs and incurred costs would be increased. In the long run we believe lack of transparency could allow plans to game risk sharing and include extra administrative costs in the allowable drug cost reporting. If this would happen, and the plans used lower drug costs in the bid but included additional administrative costs in the allowable costs submitted in reconciliation, then the government risk sharing costs would increase. We solicit comments on the issues identified above concerning government risk sharing on costs that may more appropriately be considered administrative expenses.

b. Subpart G—Payments to Part D Plan Sponsors for Qualified Prescription Drug Coverage (Definitions and Terminology, § 423.308)

i. Actually Paid (§ 423.308)

In the April 2006 Call Letter, CMS stated that Part D sponsors must report 100 percent of the rebates and price concessions they receive, including the portion of manufacturer rebates retained by PBMs. In other words, in defining price concessions that must be netted from drug costs, CMS does not make a distinction between a price concession that is passed fully through to the plan sponsor by the PBM (or any other intermediary contracting organization) and a price concession that is partially passed on and partially retained by the PBM (or any other intermediary contracting organization). When a PBM retains rebate amounts associated with drugs being purchased for enrollees in a Part D plan with which the PBM contracts, this revenue permits the PBM to charge the Part D sponsor a lower amount in administrative fees and still make the same income on the transaction. When a rebate of x amount is paid to the PBM, the Part D sponsor benefits from that rebate whether it is passed on to the sponsor in its entirety, or it is available as revenue to the PBM.

Thus, regardless of whether the PBM passes through 100% of rebates and the Part D sponsor in turn writes a check for 100% of administrative fees owed the PBM, or whether the PBM retains a portion of rebates and the Part D sponsor benefits from the fact that this revenue permits the PBM to charge a lower administrative fee for the transaction—the result is the same. The total amount of rebates received by the PBM for the Part D drugs dispensed under the Part D sponsor's contract must be reported as a price concession through DIR reporting to CMS. If we did not adopt this approach, a PBM and a Part D sponsor would be able to manipulate the amount reported in amounts actually paid simply by recasting administrative fees, which must be excluded, as rebates retained by the PBM that would not have to be reported as rebates to the PDP sponsor that benefits from the PBM's receipt of this revenue.

Therefore, we are proposing to include language in the definition of ''actually paid'' that codifies and clarifies our previous guidance, and provides that direct or indirect remuneration includes discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by an intermediary contracting organization with which the Part D sponsor has contracted for administrative services, regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the Part D sponsor. Similarly, we are clarifying that this definition of actually paid applies regardless of the terms of the contract between the plan sponsor and any intermediary contracting organization. We solicit comment on this proposed clarification.

We believe that the above analysis has equal applicability in the Retiree Drug Subsidy (RDS) context, when a qualified retiree prescription drug plan contracts with a PBM, and the PBM retains rebate amounts associated with drugs obtained for a qualifying covered retiree. Again, the qualified retiree prescription drug plan benefits from the fact that revenue attributable to drugs purchased for its retirees is available to the PBM, because the PBM would not need to charge the sponsor of the qualified retiree prescription drug plan as much in administrative fees to make the same revenue on the transaction. As in the case of a Part D sponsor, if rebate amounts retained by a PBM were not deducted from the qualified retiree prescription drug plan's costs, the plan and the PBM could ensure higher RDS payments simply by recasting administrative costs as retained rebates. Therefore, as discussed below, we are proposing to make similar amendments to the definitions in Subpart R that apply to the RDS program.

ii. Administrative Costs (§ 423.308)

The statute requires CMS to exclude administrative costs from the calculation of gross covered prescription drug costs and allowable risk corridor costs. However, administrative costs are not defined in either the statute or the January 28, 2005 final rule. Therefore, to explain this term and clarify which costs are included in administrative costs, we are proposing to add a definition for the term ''administrative costs''. We previously proposed to add this definition in the notice of proposed rule making, Policy and Technical Changes to the Medicare Prescription Drug Benefit (72 FR 29403 through 29423). However, we chose not to finalize this proposed definition in order to further examine the impact of this proposal and provide the public with an additional opportunity to comment on this proposed definition. We will consider the comments received on this definition from the previous proposed rule, as well as comments received on this proposed rule when finalizing this rule.

In this definition, we propose to define ''administrative costs'' as the Part D sponsor's costs other than those incurred to purchase or reimburse the purchase of Part D drugs under the Part D plan. Included in the definition of administrative costs are any costs incurred by Part D plans on drug claims that differ from the price charged by a dispensing entity for covered Part D drugs. As discussed above in the section

on Negotiated Prices, any net profit (or ''risk premium'') retained by a PBM that is added to the prices paid to pharmacies and billed to a Part D sponsor would be considered an administrative cost and not a drug cost. As discussed above, we believe this is because such amounts are more appropriately considered costs the plan chooses to incur to mitigate its market risk around the costs of drugs, rather than the cost of the drugs itself, and should be viewed as analogous to the cost of drug utilization management programs and similar services purchased from PBMs to manage drug costs. In order to create a level playing field around the treatment of all such related costs, we propose to clearly categorize this ''net profit'', ''risk premium'', or ''PBM spread'' as an administrative cost to the Part D plan sponsor.

The proposed policy would also refine our interpretation of the statutory and regulatory definitions of ''allowable reinsurance costs'' and ''allowable risk corridor costs,'' which in both cases exclude any administrative costs of the sponsor. By statute, ''allowable reinsurance costs'' are a subset of ''gross covered prescription drug costs,'' and Congress specifically defined these gross costs as ''not including administrative costs.'' (See sections 1860D–15(b)(2) and 1860D–15(b)(3) of the Act.) Similarly, Congress defined ''allowable risk corridor costs'' as ''not including administrative costs.'' (See section 1860D–15(e)(1)(B) of the Act.) In the January 28, 2005 final rule, we adopted these definitions. (70 FR 4547.) As noted above, we interpret administrative costs to include any net profit (or loss) incurred by an intermediary contracting organization (for example, a pharmacy benefit manager (PBM)) as a result of lock-in pricing. Therefore, this net profit or loss must not be included in the reinsurance and risk corridor payments made by the government, as these payments exclude administrative fees. Thus, the Ingredient Cost, Dispensing Fee, Sales Tax, Gross Drug Cost below the Out of Pocket Threshold, and Gross Drug Cost above the Out of Pocket Threshold fields on Prescription Drug Event (PDE) records submitted to CMS would need to reflect the final amount ultimately received by the pharmacy at the point of sale.

We are aware of concerns that the proposed definition of administrative costs would indirectly prohibit the purchase of drugs from certain entities such as PBMs. In addition, it has been argued that any costs incurred to buy drugs should be considered drug costs regardless of the party from whom the drug is purchased. However, the proposed definition for administrative costs would not directly or indirectly require Part D sponsors to purchase drugs from dispensing providers only. Part D sponsors would continue to have the option to contract or purchase drugs from other entities such as PBMs. However, to the extent that the amounts paid to a PBM for administrative services provided to a Part D sponsor are included in the cost of the drug under the lock-in pricing approach, Part D sponsors would be required to report this spread amount as an administrative cost. These administrative costs would be excluded from the Part D sponsor's allowable reinsurance and allowable risk corridor costs as required by statute.

The proposed definition of administrative cost does not include administrative fees or other remuneration that a PBM receives on behalf of a plan from pharmaceutical manufacturers or biotechnology companies. CMS considers these amounts price concessions which directly or indirectly reduce the Part D sponsor's costs under its Part D plan. Therefore, Part D sponsors would continue to report these administrative fees as DIR to ensure that they are excluded from allowable reinsurance costs and allowable risk corridor costs.

Again, this same analysis applies in the RDS context to amounts a PBM retains in connection with price concessions that reduce the qualified retiree prescription drug plan's drug costs.

iii. Gross Covered Prescription Drug Costs and Allowable Risk Corridor Costs (§ 423.308)

Part D sponsors are required to report drug costs to CMS for the purposes of reconciliation and risk sharing. We are required by statute to calculate reinsurance payments using ''allowable reinsurance costs,'' a subset of ''gross covered prescription drug costs,'' which Congress specifically defined as ''not including administrative costs.'' (See sections 1860D–15(b)(2) and 1860D–15(b)(3)of the Act). Risk sharing payments are calculated using ''allowable risk corridor costs,'' which are also defined as ''not including administrative costs.'' (See section 1860D–15(e)(1)(B) of the Act.)

There have been several questions regarding the appropriate drug costs to report, particularly when a Part D sponsor has contracted with a PBM. The January 28, 2005 final rule defines ''gross covered prescription drug costs'' as ''those actually paid costs incurred under a Part D plan, excluding administrative costs * * * [equal to:] (1) All reimbursement paid by a Part D sponsor to a pharmacy (or other intermediary) * * * plus (2) All amounts paid under the Part D plan by or on behalf of an enrollee (such as the deductible, coinsurance, cost sharing, or amounts between the initial coverage limit and the out-of-pocket threshold) in order to obtain drugs covered under the Part D plan.'' (70 FR 4547)

The January 28, 2005 final rule definition of ''gross covered prescription drug costs'' specifically recognizes that reimbursement may be paid by a Part D sponsor ''to a pharmacy (or other intermediary).'' (70 FR 4547) Many interpreted the term ''intermediary'' to mean PBM (rather than an agent of the pharmacy or other dispensing provider). Using this definition, many plan sponsors reported as gross covered prescription drug costs the prices they negotiated with their PBMs, rather than the prices that were agreed upon as the amount to be received by the pharmacies.

We propose rectifying these conflicting definitions to require the plan sponsor to include the net profit or loss retained or incurred by a PBM as part of lock-in pricing to be part of the administrative costs of the plan sponsor. This would require the amount ultimately received by the pharmacy (minus any other point-of-sale price concessions) to be used in calculating cost sharing for plan years 2010 and beyond. We previously proposed to amend this definition in the notice of proposed rule making, Policy and Technical Changes to the Medicare Prescription Drug Benefit (72 FR 29403–29423). However, we chose not to finalize this proposed definition in the final rule (73 FR 20486–20509) in order to further examine the impact of this proposal and provide the public with an additional opportunity to comment on this proposed definition. We will consider the comments received on this definition from the previous proposed rule, as well as comments received on this proposed rule when determining whether to finalize this policy. Specifically, we are proposing to amend the definition of ''gross covered prescription drug costs'' to eliminate the parenthetical ''or other intermediary'' to require that all plan sponsors report the amount ultimately received by the pharmacy or other dispensing provider. We propose that the amount ultimately received by the pharmacy or other dispensing provider (whether directly or indirectly) for the particular drug will be the basis for accumulating gross covered drug costs and reporting drug costs on the Prescription Drug Event (PDE) records.

Similarly, we propose clarifying our definition of ''allowable risk corridor costs'' so that it is clear that these costs are only based upon the amounts received directly by the pharmacy or other dispensing provider. This is because we would consider any net profit (or loss) earned by a PBM or other entity negotiating contracts with pharmacies to constitute an administrative cost, and therefore, to be exempt from the definition of allowable risk corridor costs, as well as gross covered prescription drug costs. Thus, for example, if a Part D sponsor pays a PBM a certain amount for a particular drug, and then the PBM negotiates a different price with the pharmacy, any differential retained or lost by the PBM would be considered an administrative cost, and could not be reported as part of drug costs. As discussed above in the section on Negotiated Prices, the net profit or loss (or ''risk premium'') retained by a PBM that is added to the prices paid to pharmacies and billed to a Part D sponsor under the lock-in pricing approach would be considered an administrative cost. As argued above, such amounts are more appropriately considered costs that the plan chooses to incur to mitigate its market risk around the costs of drugs, rather than the cost of the drugs itself, and should be viewed as analogous to the cost of drug utilization management programs and similar services purchased from PBMs to manage drug costs. In order to create a level playing field around the treatment of all such related costs, we propose to clearly categorize this ''profit'', ''risk premium'', or ''PBM spread'' as an administrative cost to the Part D plan sponsor and to explicitly disallow it from gross covered prescription drug costs, allowable reinsurance costs (a subset of gross covered prescription drug costs), and allowable risk corridor costs.

We, therefore, propose revising the definitions of ''gross covered prescription drug costs'' and ''allowable risk corridor costs'' to establish that the amount received by the dispensing pharmacy or other dispensing provider (whether directly or through an intermediary contracting organization) is the basis for drug cost that must be reported to CMS, and not the amount paid by the Part D sponsor to the PBM. Accordingly, we are revising § 423.308 to incorporate these changes.

We are aware of concerns that these proposed changes to the definitions of gross covered drug costs and allowable risk corridor costs may require Part D sponsors to depend heavily on information traditionally held exclusively by PBMs. For the sponsor's convenience, or for other reasons, such as to protect the privacy of beneficiary personal health information data, a Part D sponsor's contractor may submit drug cost data on the Part D sponsor's behalf to CMS directly rather than through the Part D sponsor. Therefore, some have argued, the Part D sponsor cannot attest to the validity of drug cost data it does not see. However, because we contract with Part D sponsors for the provision of the Medicare prescription drug benefit, Part D sponsors, and not their subcontractors, are ultimately responsible for the quality of data submitted to us. Part D sponsors that choose to contract with a PBM or any other third party administrator, therefore, must take reasonable steps to ensure that the data submitted to us on their behalf is accurate and timely. For example, the sponsor may engage an independent auditor to audit the data prior to its submission to us.

We also propose amending the definition of ''gross covered prescription drug costs'' and ''allowable risk corridor costs'' to ensure that when entities other than pharmacies dispense Part D drugs and receive payment for Part D drugs, these expenditures also are reflected in gross covered prescription drug costs and allowable reinsurance costs, as well as allowable risk corridor costs. For instance, reimbursement for a vaccine that must be administered in a physician's office and reimbursement made to a third party payer in accordance with our coordination of benefits (COB) requirements are both legitimate drug costs that have been incurred through the payments indicated. In addition, in accordance with § 423.464, the Part D sponsor must coordinate benefits with other Part D plans as the result of any reconciliation process developed by CMS under § 423.464, such as when another Part D plan mistakenly paid for a prescription drug on the beneficiary's behalf based on an erroneous belief that the beneficiary was actually enrolled in its plan. In these cases, when the enrollment error is corrected, the beneficiary's true plan generally will reconcile payments with the original payer. The drug costs paid by Part D plans (as well as by the beneficiary) under these reconciliation processes reflect drug costs incurred by the plan's enrollees that a payer other than the correct Part D plan of record paid as primary. As drug costs paid for Part D covered drugs under Part D plans, these costs are included in the calculations of reinsurance costs and risk corridor costs. Therefore, we have amended the definition of ''gross covered prescription drug costs'' and ''allowable risk corridor costs'' in § 423.308 to include all these drug costs.

We also propose amending the definition of ''gross covered prescription drug costs'' to ensure that when a beneficiary is responsible for 100 percent of the cost for a covered Part D drug (as in any applicable deductible or coverage gap of a basic plan), and the beneficiary obtains that covered Part D drug at a network pharmacy for a price below the plan's negotiated price, the beneficiary's out-of-pocket costs that are considered ''incurred costs'' for covered Part D drugs count toward both TrOOP and total drug spending. This is consistent with guidance released via Q&A 7944 (issued May 9, 2006 *http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=gIVVcxhi*.) For example, when an enrollee is in an applicable coverage gap or deductible phase of the Part D benefit, the enrollee may be able to obtain a better cash price for a covered Part D drug at a network pharmacy than the plan offers via its negotiated price. The enrollee may take advantage of a special cash price or discount being offered to all pharmacy customers for the covered Part D drug or, alternatively, use a discount card. In such cases, the enrollee purchases a covered Part D drug without using the membership card for his or her Part D plan. If that purchase price is lower than the Part D plan's negotiated price, it will count toward TrOOP and total drug spend balances, provided the Part D plan finds out about the purchase. When the enrollee chooses not to use his/her membership card at a network pharmacy, that enrollee must take responsibility for submitting the appropriate documentation to the enrollee's Part D plan, consistent with plan-established processes and instructions for submitting that information, in order to have that amount aggregated to the beneficiary's TrOOP and total drug spend balances. We are aware of concerns that it is overly burdensome to require beneficiaries to submit claims for these reduced price purchases. However, we cannot require in-network pharmacies to submit these claims to Part D sponsors electronically, because at this time the HIPAA standard for claims submission does not accommodate the electronic transmission of this claim information by network pharmacies. To the extent that a future revision of the HIPAA standard does accommodate such transactions, we would support minimizing the submission of paper claims by beneficiaries.

The applicability of beneficiary out-of-pocket expenditures made outside the Part D benefit to TrOOP and total drug spend also extends to any nominal copayments assessed by manufacturer patient assistance programs (PAPs) that provide assistance with covered Part D drug costs to Part D enrollees outside the Part D benefit. Consistent with guidance provided via Q&A 7942 (*http://questions.cms.hhs.gov/cgi-bin/cmshhs.cfg/php/enduser/std_alp.php?p_sid=gIVVcxhi*), providing assistance with covered Part D drug costs to Part D enrollees outside the Part D benefit does not preclude a PAP sponsor from requiring its enrollees (including those enrolled in a Part D plan) from paying a nominal copayment when they fill a prescription for a covered Part D drug for which they provide assistance. We note that any copayments assessed by PAPs operating outside the Part D benefit should be nominal, since only nominal beneficiary cost-sharing is consistent with the concept of operating outside Part D. Moreover, given that copayments are typically assessed for purposes of minimizing drug over-utilization, the assessment of anything but nominal cost-sharing by PAPs is seemingly inconsistent with the mission of a charitable organization structured to provide assistance with prescription drug costs to low-income patients.

Although PAP payments made for covered Part D drugs outside the Part D benefit do not count toward enrollees' TrOOP or total drug spend balances, nominal PAP copayment amounts paid by affected Part D enrollees can be applied to their TrOOP and total drug spend balances, provided the enrollees submit the appropriate documentation to their plan consistent with plan-established processes and instructions for submitting the information. We are proposing to revise the definition of ''gross covered prescription drug costs'', as well as the definition of ''incurred costs'' in § 423.100, to include these drug costs and to reflect this sub-regulatory guidance.

We also note that § 423.308 includes a definition of the term ''target'' amount. Due to a technical formatting error, this definition appears to be the second paragraph of the definition of gross covered prescription drug costs. To clarify that the definition of ''target amount'' is not part or a component of the definition of gross covered prescription drug costs, but is a separate definition of a different term, we are proposing to revise the current discussion of ''target amount'' and are providing an amendatory instruction to add the definition in § 423.308. We are proposing technical edits to this definition to ensure that the structure of the definition is similar to that of other definitions in this section. We are proposing no substantive changes to the definition.

c. Subpart R: Payments to Sponsors of Retiree Prescription Drug Programs (Definitions, § 423.882)

Section 423.882 codifies existing guidance. Given the similarities between the statutory definitions of ''gross covered prescription drug costs'' under section 1860D–15(b)(3) of the Act and ''gross covered retiree plan-related prescription drug costs'' under section 1860D–22(a)(3)(C)(ii) of the Act, we have consistently stated our intent to determine gross covered retiree plan-related prescription drug costs in a manner corresponding to our determination of gross covered prescription drug costs. Additionally, given the similarities between the statutory definitions of ''allowable reinsurance costs'' under section 1860D–15(b)(2) of the Act and ''allowable retiree costs'' under section 1860D–22(a)(3)(C)(i) of the Act, we determine allowable retiree costs in a manner parallel to how we determine allowable reinsurance costs. For example, for terminology not specifically defined under § 423.882, we generally utilize the relevant Part D definitions to the extent that they are consistent with the statutory provisions under section 1860D–22 of the Act. In addition, our RDS guidance related to the calculation of gross covered retiree plan-related prescription drug costs (or ''gross retiree costs'') and allowable retiree costs generally corresponds with the Part D guidance on the calculation of gross covered prescription drug costs and allowable reinsurance costs.

In order to ensure continued consistency between the RDS program and Part D, and because, as noted above, we believe the same policy arguments in favor of the Part D definitions apply to similar arrangements under the RDS program, we believe that the regulatory definitions under § 423.882 applicable to the RDS program should mirror the corresponding Part D definitions under § 423.100 and § 423.308. Accordingly, we propose to make the following additions and revisions to § 423.882 to be consistent with the corresponding existing and proposed definitions under § 423.100 and § 423.308. The proposed definitions under § 423.882 include codification of existing CMS guidance.

- *Actually Paid:* We propose to add this definition to mirror the proposed revised definition under § 423.308, with the exception of technical changes and clarifications to reflect its application to the RDS program. Specifically, we propose to define actually paid to mean that the costs must be actually incurred by the qualified retiree prescription drug plan (and/or the qualifying covered retiree) and must be net of any direct or indirect remuneration from any source (including manufacturers, pharmacies, qualifying covered retirees, or any other person) that would serve to decrease the costs incurred under the qualified retiree prescription drug plan. Similarly, we are also proposing to include language in this definition that provides that direct or indirect remuneration includes discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by an intermediary contracting organization with which the sponsor of the qualified retiree prescription drug plan has contracted for administrative services, regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the sponsor of the qualified retiree prescription drug plan. Similarly, we are clarifying that this definition of actually paid applies regardless of the terms of the contract between the sponsor of the qualified retiree prescription drug plan and any intermediary contracting organization.
- *Administrative costs:* We propose to add this definition to mirror the proposed revised definition under § 423.308 with the exception of minimal changes to reflect the RDS terminology. Specifically, we propose to define administrative costs to mean costs incurred by a qualified retiree prescription drug plan that are not drug costs incurred to purchase or reimburse the purchase of Part D drugs and that differ from the amount paid by or on behalf of the plan to a pharmacy or other entity that is the final dispenser of the drug. Similarly, we are proposing to include language in this definition that any profit or loss retained by the intermediary contracting organization (through discounts, rebates, or other direct or indirect price concessions) when negotiating prices with dispensing entities is considered an administrative cost.
- *Allowable Retiree Costs:* We propose to make changes to the existing definition to mirror the relevant portions of the existing definition of ''allowable reinsurance costs'' under

§ 423.308. Specifically, we propose to revise the definition of allowable retiree costs under § 423.882 by clarifying that allowable retiree costs are the subset of gross covered retiree plan-related prescription drug costs actually paid by the qualified retiree prescription drug plan or by or on behalf of a qualifying covered retiree.

• *Gross covered retiree plan-related prescription drug costs:* We propose to revise the existing definition of ''gross covered retiree plan-related prescription drug costs'' (or ''gross retiree costs'') to mirror the proposed definition of ''gross covered prescription drug costs'' under § 423.308, with the exception of minimal changes to reflect the RDS terminology. Specifically, we propose to revise our definition of gross retiree costs to clarify that these costs equate to the sum of the negotiated prices (as defined in the proposed definition) actually paid by the qualified retiree prescription drug plan (and/or qualifying covered retirees) and received by the dispensing pharmacy (or other dispensing entity), or received by other entities pursuant to the plan's coordination of benefits (COB) activities. As with our existing definition of gross retiree costs, our proposed definition would exclude administrative costs from gross retiree costs.

• *Negotiated Prices:* We propose to add this definition to mirror the proposed definition of negotiated prices under § 423.100 with the exception of minimal changes to reflect RDS terminology. Specifically, we propose to define negotiated prices for Part D drugs as the prices that the qualified retiree prescription drug plan (or other intermediary contracting organization) and the network dispensing pharmacy or other network dispensing provider have negotiated as the amount such network entity will receive, in total, for a particular drug, net of discounts, direct or indirect subsidies, rebates, other price concessions, and direct or indirect remuneration that the qualified retiree prescription drug plan has elected to pass through to qualifying covered retirees at the point of sale. Similarly, we are proposing that negotiated prices include any dispensing fees.

Under these proposed definitions, payments made to RDS plan sponsors of qualified retiree prescription drug plans (or ''RDS sponsors'') would be based upon ''pass-through'' prices and not ''lock-in'' prices that the RDS plan sponsor pays to a PBM or other intermediary contracting organization. We elaborate on our reasons for requiring ''pass-through'' versus ''lock-in'' prices for RDS plan drug costs further below, as well as solicit specific comments from stakeholders to ensure we are aware of all of the ramifications of this proposed policy.

The ''pass through'' vs. ''lock in'' approach is being proposed for RDS plan sponsors for many of the same policy considerations that, as discussed in section II.B.4 of this proposed rule, underlie our proposed modifications to the Part D definitions of ''negotiated prices,'' ''administrative costs,'' ''allowable risk corridor costs,'' and ''gross prescription drug costs'' under § 423.100 and § 423.308. Specifically, the RDS payment is calculated based on allowable retiree costs, which in turn is a subset of gross retiree costs. (See sections 1860D–22(a)(3)(A),(C)(i), and (C)(ii) of the Act.) The statute requires CMS to exclude administrative costs from the calculation of gross covered retiree plan-related prescription drug costs and subsidizing these costs would therefore be contrary to Congressional intent. (See section 1860D–22(a)(3)(C)(ii) of the Act.) As explained in section II.B.3.a.ii of this proposed rule, discussing the proposed Part D definition of Negotiated Prices, we believe any net profit (or ''risk premium'') retained by a PBM that is added to the prices paid to pharmacies and billed to a Part D sponsor should be considered an administrative cost and not a drug cost. This same principle equally applies to the RDS program. Because we believe any net profit or risk premium retained by a PBM or similar intermediary contracting organization should be considered administrative costs and not drugs costs, we believe including these costs in gross retiree costs and allowable retiree costs would be contrary to Congressional intent that the RDS payment not subsidize an RDS sponsor's administrative costs. To ensure that these amounts are excluded from gross and allowable retiree costs, we, therefore, propose to define administrative costs as including any profit or loss retained by an intermediary contracting organization contracting with an RDS sponsor that differs from the amount paid to a pharmacy or other entity that is the final dispenser for drugs dispensed to qualifying covered retirees. We solicit comments on all proposed definitions discussed above.

We note that our proposed definition of administrative costs would not directly or indirectly require RDS plan sponsors to purchase drugs from dispensing providers only, and RDS plan sponsors would continue to have the option to contract or purchase drugs from other entities such as PBMs. However, to the extent that the amounts paid to a PBM or similar intermediary contracting organization for administrative services provided to a RDS plan sponsor are included in the cost of the drug under the lock-in pricing approach, RDS plan sponsors would be required to treat this spread amount as an administrative cost and these administrative costs would be excluded from the RDS plan sponsor's allowable retiree costs.

Our proposal would not require an RDS plan sponsor to use a particular pricing approach in its contracting agreements with PBMs. RDS plan sponsors may continue to use either the pass-through or lock-in pricing approach when contracting with a PBM—provided that drug costs reported to us are based on the price ultimately received by the pharmacy.

There may be concerns that these proposed changes may require RDS plan sponsors to depend heavily on information traditionally held exclusively by PBMs. To protect the privacy of beneficiary personal health information data, an RDS sponsor's PBM or other intermediary contracting organization may submit drug cost data on the RDS sponsor's behalf to CMS directly rather than through the RDS sponsor. However, RDS plan sponsors, and not the intermediary contracting organizations, are ultimately responsible for the data submitted to us, and those that choose to contract with a PBM or other third party to submit data to CMS, therefore, must take reasonable steps to ensure that the data submitted to us on their behalf is accurate and timely.

4. Limiting Copayments to a Part D Plan's Negotiated Price (§ 423.104)

Section 1860D–2(d)(1) of the Act requires Part D sponsors to offer their enrollees access to negotiated prices used for payment for covered Part D drugs. In previous operational guidance, Part D sponsors were advised that it was optional when administering a Part D plan's benefit to apply either a copayment (if the sponsor elected to charge a flat copayment in lieu of coinsurance) or the actual negotiated price of the drug when that amount was lower than the copayment as outlined in the plan benefit package. Although we expected that very few Part D sponsors would choose to impose a cost sharing charge higher than the negotiated price of the drug, we allowed the option consistent with commercial practices. In practice, CMS found that the majority of Part D sponsors administer the benefit in such a way that the lesser of a cost sharing charge or the negotiated price of

the drug is applied to the beneficiary at the point of sale.

Based on our experience in implementing the benefit, we believe that a policy where the plan sponsor charges the beneficiary the lesser of the cost sharing amount or the negotiated prices is more consistent with the intent of section 1860D–2(d) of the Act. Accordingly, we propose to revise our policy so that, for example, a beneficiary who is subject to a $5 copayment during the coverage gap cannot be required to pay more than the negotiated price of the covered Part D drug, if the negotiated price is less than $5. Specifically, we propose to revise the requirements related to qualified prescription drug coverage at § 423.104(g) to make clear that Part D sponsors must provide enrollees with access to, or make available at the point-of-sale, its negotiated prices of covered Part D drugs when the covered Part D drugs' cost-share is more than the Part D sponsor's negotiated price. In other words, if the negotiated price for a covered Part D drug under a Part D sponsor's benefit package is less than the applicable cost-sharing before the application of any deductible, before any initial coverage limit, before the annual out-of-pocket threshold, and after the annual out-of-pocket threshold.

5. Timeline for Providing Written Explanation of Plan Benefits (§ 423.128)

In accordance with the requirements of section 1860D–4(a)(4) of the Act, § 423.128(e) of our final rule implementing the provisions of the Part D program (which appeared in the **Federal Register** on January 28, 2005, and the provisions of which became effective March 22, 2005), requires Part D sponsors to furnish to enrollees who receive covered Part D drugs an explanation of benefits (EOB) when prescription drug benefits are provided. As articulated in the preamble to our January 2005 final rule, our intent was to ensure that an EOB was provided to Part D enrollees at least monthly if they used their prescription drug benefits in a given month. Section 423.128(e)(6) specifically requires that an EOB be provided ''*during* any month when prescription drug benefits are provided * * *.''. This was an inadvertent error given that, operationally, it is not feasible for Part D sponsors to mail their members an EOB during the same month in which they used their prescription drug benefits.

Sponsors must build into their EOB mailing cycles sufficient time to not only process each member's EOB, but also to produce and mail an EOB to each member with activity in a given month. Since the implementation of the Part D program in January 2006, it has become clear that a more reasonable timeframe for the provision of an EOB is warranted given the operational impossibility of providing an EOB for a month in which a member used his or her benefits during that same month. We therefore propose a revision to § 423.128(e)(6) to require sponsors to provide an EOB no later than the end of the month following the month in which an enrollee uses his or her Part D benefits. We believe that our proposed revision to § 423.128(e)(6) strikes a reasonable balance between Part D sponsor production constraints and the timely provision of claims information to Part D enrollees.

6. Low-Income Subsidy Provisions

a. Low-Income Cost-Sharing and Payment Adjustments for Qualified Prescription Drug Coverage (§ 423.329)

CMS currently makes prospective payments to Part D plan sponsors of the low-income cost sharing subsidy (LICS) based solely on estimates provided as part of the annual bidding process. When LICS estimates are too high, excessive prospective payments are made that (under our current process) are not recovered until the year end reconciliation. In its report ''Medicare Part D Sponsors: Estimated Reconciliation Amounts for 2006,'' released October 2007, the HHS Office of the Inspector General recommended that CMS explore other payment methodologies to recoup excessive LICS payments earlier.

Section 1860D–14(c)(1)(C) of the Act, when providing for administration of the subsidy program, gives the Secretary flexibility in determining a process for payment of the LICS subsidies as long as plan sponsors are reimbursed ''periodically and on a timely basis.''

The Part D program regulations at 42 CFR 423.329(d)(2) state that payments of the LICS subsidy under this section are based on a method that CMS determines. However, in paragraph (d)(2)(i) we also stated that LICS interim payments are to be made based on the low-income cost-sharing assumptions submitted with plan bids under § 423.265(d)(2)(iv) and negotiated and approved under § 423.272.

The language of § 423.329(d)(2)(i) regarding interim payments of the LICS subsidies has proven overly restrictive and has had the unintended effect of requiring CMS to make payments to Part D plan sponsors that are subsequently determined to have been significantly different from their actual costs, and which will not be recovered until payment reconciliation is completed. In contrast, the regulation governing interim payment of Part D reinsurance affords greater flexibility to CMS to determine the most appropriate interim payment methodology. The regulation at § 423.329(c)(2)(i) states that, ''CMS establishes a payment method by which payments of [reinsurance] are made on a monthly basis during the year, based on either estimated or incurred allowable reinsurance costs.'' Therefore, we propose to add to the end of § 423.329(d)(2)(i) the following qualifying statement: ''or by an alternative method that CMS determines.'' This proposed revision would afford CMS additional flexibility to make mid-year LICS payment adjustments or other modifications to the LICS interim payment methodology, as appropriate.

b. Lesser of Policy for Low-Income Subsidy Individuals (§ 423.782)

Section 1860D–14 of the Act establishes the low-income subsidy program available to Part D sponsors to provide low-income individuals assistance with their Part D plan cost-sharing amounts and premiums. The amount of a Part D sponsor's low-income cost-sharing subsidy is based upon the difference between the amount the non-subsidized beneficiary pays for his/her Part D covered drug under the plan's benefit package and the maximum cost-sharing amounts established in statute at section 1860D–14(a) of the Act. For calendar year 2008, full subsidy eligible individuals (as defined in the current regulation at 42 CFR 423.773(b)) are not subject to any deductible and cannot be charged cost sharing above the maximum cost sharing amounts of $1.05/$2.25 for generics and preferred multi-source brand name drugs; and $3.10/$5.60 for other brand name drugs in 2008. Other low-income subsidy eligible individuals, as defined at 42 CFR 423.780(d), cannot be charged more than $56 towards a Part D sponsor's deductible, and cannot be charged more per prescription than an amount equal to 15 percent coinsurance.

When we originally drafted the regulations, we assumed that the Part D sponsor benefit packages would routinely result in higher cost sharing amounts for non-subsidized beneficiaries than the maximum low-income subsidy deductible and cost sharing amounts. However, when Part D sponsors offer benefit packages that already provide beneficiaries with a deductible and cost sharing less than the low-income deductible and cost sharing maximum amounts established

in statute (such as for zero dollar generics), this turns out not to always be the case. There are also instances when the Part D sponsor's negotiated prices used for payment for covered Part D drugs are less than the low-income cost sharing amounts. In these cases, our operational guidance (Prescription Drug Event or PDE training guide *http://www.medicaretraining.net/federalemployees/ParticipantGuide.pdf*) has instructed that Part D sponsors charge low-income beneficiaries the lesser of (1) its plan benefit package's prescribed cost-sharing, (2) the sponsor's negotiated rate for the drug, or (3) the LIS cost sharing amount established in statute. If the Part D sponsor's plan deductible was either less than the maximum low-income subsidy deductible amount or zero, the beneficiary should not be charged more than the plan's actual deductible.

The basis of our PDE guidance is found both in regulation and in statute. Section 1860D–14(a) of the Act provides that a beneficiary is eligible for a ''*reduction* in the annual deductible'' and ''*reduction* in cost-sharing [above or below] the out-of-pocket threshold.'' We believe the statute does not require that the low-income subsidy beneficiary be charged the statutorily-defined cost-sharing amounts if the approved cost sharing for a specific drug under a plan is less than that amount. Nor does the statute require that the low-income subsidy beneficiary be subject to a defined deductible when a Part D sponsor's plan benefit structure does not include a deductible. Thus, our previously issued guidance is consistent with the statutory parameters outlining the reductions in beneficiary out-of-pocket cost sharing amounts. The statute at 1860D–2(d)(1) of the Act also requires Part D sponsors to offer their enrollees access to negotiated prices used for payment for covered Part D drugs. We believe a Part D sponsor that imposes the statutory low-income cost sharing amounts on low-income subsidy beneficiaries when the PDP sponsor's negotiated prices are less than the low-income cost sharing amounts, violates 1860D–2(d) of the Act with regard to an enrollee's access to negotiated drug prices.

Furthermore, our current regulations at 42 CFR 423.104(b) sets forth the requirement that Part D sponsors must offer the same drug plan to all Part D eligible beneficiaries residing in their plan service area. We commonly refer to this section of the regulation as the uniform benefit rule. This section prohibits Part D sponsors from varying plan benefits to beneficiaries in a service region and further supports the policy that low-income subsidy beneficiaries not be charged more than what they, or other non-LIS beneficiaries would be charged under the Part D sponsor's plan benefit package. For an extensive discussion of the statutory basis for 42 CFR 423.104(b), see 70 FR 4245 of the preamble to the final Medicare Prescription Drug Benefit Rule published January 28, 2005.

To ensure low-income subsidy eligible beneficiaries are not harmed when the statutory low-income subsidy cost-sharing amounts are in excess of cost-sharing imposed under their plan's benefit package, we propose to codify our existing guidance in regulation. We propose adding a new paragraph (c) to § 423.782 which would clarify that the cost-sharing subsidy under § 423.782(a) and (b) is not available when an individual's out-of-pocket costs, under his or her Part D sponsor's plan benefit package, are less than the amounts described in § 423.782(a) and (b).

c. Using Best Available Evidence to Determine Low-Income Subsidy Eligibility Status (§§ 423.772, 423.800)

Section 1860D–14(a)(3)(B)(v) of the Act requires the Secretary to treat Part D eligible individuals who are full-benefit dual eligible individuals (as defined under 1935(c)(6)) or recipients of supplemental security income under title XVI as full low-income subsidy eligible individuals. Section 1860D–14(c)(1) of the Act further requires that the Secretary provide for a process under which (1) the Secretary notifies the PDP sponsor that an individual is eligible for a low income subsidy, and (2) the PDP sponsor is required to reduce the premiums and cost sharing for such individuals to the amount a low-income subsidy eligible individual is required to pay.

The primary process CMS has employed to implement these requirements is for CMS to identify low-income subsidy-eligible individuals based upon information from the States on Medicaid eligibility and Social Security on SSI eligibility and the eligibility of LIS applicants. Because we do not always have timely or up-to-date information from these sources, however, we developed a process under which sponsors accept and use reliable documentation, known as ''best available evidence,'' to establish a beneficiary's low-income subsidy eligibility status and communicate this information to the Secretary.

This ''best available evidence'' policy derives from the fact that, while section 1860D–14(c)(1)(A) of the Act provides for CMS to inform sponsors of low-income subsidy eligibility, the sponsor's obligation under section 1860D–14(c)(1)(B) of the Act to reduce premiums and cost-sharing for all such individuals is not contingent upon CMS doing so. While CMS attempts to identify all subsidy eligible individuals to the full extent possible, experience has shown that this does not necessarily result in every such individual being successfully identified. CMS believes, therefore, that the Sponsors have an obligation to take reasonable steps to respond to documentation that identifies such individuals when they have not been identified by CMS, in order to fulfill their statutory obligation to reduce premiums and cost-sharing for such individuals.

Given the importance of this policy, we propose to codify it in § 423.800(b) and (d). Specifically, we propose to include in regulations text guidance (*Part D Guidance—Low-Income Subsidy (LIS) Status Corrections Based on Best Available Evidence*, dated June 27, 2007, available at: *http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/Final%20Sponsor%20Guidance%20on%20BAE%20062707.zip*) we have issued to Part D sponsors concerning our best available evidence (BAE) policy.

These revisions to § 423.800 reflect our current policy that Part D sponsors must accept and use BAE in those instances when this evidence, submitted by the beneficiary or another person on the beneficiary's behalf, substantiates that the beneficiary's information in CMS systems is not accurate. To ensure the appropriateness of corrections based on BAE, CMS policy requires sponsors to maintain for 10 years the original documentation used to substantiate requests for manual updating of the CMS system to accommodate subsequent periodic government audits. In addition, we plan to establish a feedback mechanism to the States to confirm the LIS corrections based on BAE and identify and address any problems in State to CMS reporting.

As noted above, this policy is necessary because the monthly files from the States and Social Security CMS uses to establish an individual's low-income subsidy eligibility pursuant to section 1860D–14(c)(1)(A) of the Act do not always accurately reflect an individual's true eligibility status. In certain cases, for example, the State has not yet reported the individual as Medicaid eligible, or has not reported him/her as institutionalized. As a result, CMS systems do not reflect a beneficiary's correct low-income subsidy (LIS) status at that point in

time. As a result, accurate subsidy information on these individuals has not been communicated to the Part D plan.

In these circumstances, beneficiaries, advocates or pharmacies have brought such errors to the Part D sponsor's attention. CMS believes that the Part D sponsor is in the best position to address such errors and appropriately apply the subsidy as it is required by statute to do under section 1860D–14(c)(1)(B) of the Act. This led to CMS's development of the best available evidence (BAE) policy that we are proposing to incorporate in this proposed rule.

Specifically, we are proposing to amend the regulations to require that Part D sponsors use BAE to substantiate a beneficiary's eligibility for a reduction in premiums and or cost-sharing in the case of individuals who indicate they are eligible for the low-income subsidy. These include full-benefit dual eligible individuals, partial dual eligible individuals (that is, those who are enrolled in a Medicare Savings Program as a Qualified Medicare Beneficiary, Specified Low-Income Medicare Beneficiary or Qualifying Individual), people who receive Supplemental Security Income (SSI) benefits but not Medicaid, and people who apply for and are determined eligible for a subsidy. Under the BAE policy we propose to incorporate in this proposed rule, sponsors are required to accept and use BAE to correct the beneficiary's low-income subsidy data in the sponsor's system and, as applicable, document requests for CMS to correct the beneficiary's low-income subsidy data in our system when the change has not occurred as a result of the routine reporting.

CMS continues to work to improve low-income subsidy data reporting. Such improvements would include, for example, permitting more frequent State submission of data files to CMS, more frequent CMS processing of data files and improved communication of the information to Part D sponsors.

Nevertheless, we anticipate that the BAE policy will remain in place for the indefinite future. As a result, we are proposing to modify § 423.800 by adding a fourth paragraph, consistent with our current policy, that would require Part D sponsors to use the CMS-developed BAE process to establish the appropriate cost-sharing for low-income beneficiaries whose information in CMS systems is not correct. By adding this provision to the regulation, we are ensuring that our best available evidence policy and its requirements are clear to all parties and, in so doing, that the administration of the low-income subsidy program takes advantage of all data currently available to the Part D sponsors to ensure low-income beneficiaries are not burdened by unnecessary cost sharing at the point of sale. We also believe we will be in a stronger position from a compliance perspective, as it will strengthen our ability to take action against plans that fail to implement our best available evidence process.

We expect that CMS guidance implementing the BAE policy will be updated as necessary to reflect appropriate process modifications as they become warranted, based on changes in technology and the types of documents that could in the future prove to reliably verify a beneficiary's status as an individual eligible for a full low-income subsidy.

We propose to define best available evidence at § 423.772 as documentation or information that is directly tied to authoritative sources, confirms that an individual meets the requirements for the low-income subsidy, and is used to support a change in an individual's low-income subsidy status. We are not proposing to specify in the regulation the specific documents that would meet these criteria, as there may be documents that meet these criteria in the future that do not currently exist.

Currently, however, evidence sufficient to make a change to a beneficiary's low-income status includes any one of the following:

- A copy of the member's Medicaid card which includes the member's name and an eligibility date during the discrepant period or no later than July of the preceding year.
- A report of contact including the date a verification call was made to the State Medicaid Agency and the name, title and telephone number of the state staff person who verified the Medicaid status during the discrepant period;
- A copy of a state document that confirms active Medicaid status during the discrepant period;
- A print out from the State electronic enrollment file showing Medicaid status during the discrepant period;
- A screen print from the State's Medicaid systems showing Medicaid status during the discrepant period; or
- Other documentation provided by the State showing Medicaid status during the discrepant period.

In addition, evidence to establish that a beneficiary is institutionalized and qualifies for zero cost-sharing includes any one of the following:

- A remittance from the facility showing Medicaid payment for a full calendar month for that individual during the discrepant period;
- A copy of a state document that confirms Medicaid payment to the facility for a full calendar month on behalf of the individual; or
- A screen print from the State's Medicaid systems showing that individual's institutional status based on at least a full calendar month stay for Medicaid payment purposes during the discrepant period.

Again, the proposed changes described in this portion of the proposed rule would not change current BAE policy. Rather they would codify existing operational processes and reflect our historic policy that Part D sponsors use BAE when this evidence substantiates that the beneficiary's information in CMS systems is not accurate. We invite comment on methods by which we can improve this policy in the future.

7. Certification of Allowable Costs (§ 423.505)

We propose, by revising § 423.505(k)(5), to clarify that the certification of allowable costs for risk corridor and reinsurance information includes direct and indirect remuneration that serves to decrease the costs incurred by a Part D sponsor for a Part D drug. The submission of accurate and complete data regarding direct and indirect remuneration that reduces a Part D sponsor's costs for Part D drugs under the Medicare prescription drug benefit is necessary to ensure accurate reinsurance and risk corridor payments.

8. Change of Ownership Provisions (§ 423.551)

We propose to amend the change of ownership provisions in 42 CFR 423.551, by adding paragraph (g) to clarify that PDP sponsors may not sell or transfer individual beneficiaries or groups of beneficiaries enrolled in any of their plan benefit packages (PBPs). This new provision is simply a clarification of an existing restriction on PDP sponsors' ability to sell portions of their Part D lines of business.

This proposed restriction on the sale of beneficiaries is based on two CMS determinations. First, in the preamble to the current Part D rule that published in the **Federal Register** January 28, 2005 (70 FR 4341), CMS stated that we would recognize the sale of PDP lines of business as asset transfers that constitute a change ownership which CMS may recognize through the execution of an agreement to novate the selling sponsor's PDP sponsor contract to a second qualified sponsor. Using a

common understanding of the phrase ''line of business'' as referring to a company's set of products or services, CMS maintains that a ''PDP line of business'' includes a PBP as well as the beneficiaries enrolled in that PBP. Therefore, there can be no sale of a line of business consisting solely of a set of beneficiaries without the accompanying transfer to the succeeding sponsor of the obligation to continue to provide the PBP services the beneficiaries have already elected.

Second, the sale of individual beneficiaries would allow PDP sponsors effectively to make enrollment elections on behalf of beneficiaries when the Part D statute grants that authority exclusively to beneficiaries (see section 1860D–1(a)(1)(A) of the Act) and, in the case of full-benefit dual eligible beneficiaries, CMS (see section 1860D–1(b)(1)(C) of the Act). The change of ownership provisions of subpart L may not be read as a grant of enrollment election authority to PDP sponsors.

We propose to add § 423.551(g) to provide necessary clarification on this change of ownership issue. During the first 2 years of the Part D program, several PDP sponsors have requested CMS approval of transactions involving the sale of beneficiaries. This clarification will minimize the number of sponsors that mistakenly begin negotiations on such sale agreements.

C. Proposed Changes to the MA and Prescription Drug Benefit Programs

In order to assist readers in understanding how the proposed provisions we discuss in this section would apply to both programs, we are including Table 1, which highlights the provisions affecting both programs and the pertinent Part 422 and Part 423 CFR sections.

TABLE 1.—PROVISIONS AFFECTING BOTH THE PART C AND PART D PROGRAMS

Provision	Part 422 Subpart	Part 422 CFR section	Part 423 Subpart	Part 423 CFR section
Passive enrollment procedures	Subpart B	422.60	Subpart B	423.32
Involuntary disenrollment and non-payment of premium.	Subpart B	422.74	Subpart B	423.44
Disclosure of plan information	Subpart C	422.111	Subpart C	423.128
Retroactive premium collection and beneficiary repayment options.	Subpart F	422.262	Subpart F	423.293
Prohibiting improper billing of monthly premiums	Subpart F	422.262	Subpart F	423.293
Non-renewal notification timelines	Subpart K	422.506	Subpart K	423.507
Reconsiderations	Subpart M	422.578, 422.582	Subpart M	423.560, 423.580, 423.582
Civil money penalties	Subpart O	422.760	Subpart O	423.760
Marketing: Definitions	Subpart V (all marketing sections).	422.2260	Subpart V (all marketing sections.	423.2260
Marketing: Review and distribution of marketing materials.		422.2262		423.2262
Marketing: Guidelines for CMS review		422.2264		423.2264
Marketing: Deemed approval		422.2266		423.2266
Marketing: Standards for MA/Part D marketing		422.2268		423.2268
Marketing: Licensing of marketing representatives and confirmation of marketing resources.		422.2272		423.2272
Marketing: Broker and agent commissions		422.2274		423.2274
Marketing: Employer and group retiree marketing (MA provision only).		422.2276		423.2276

1. Authorization of Automatic or Passive Enrollment Procedures (§§ 422.60 and 423.32)

Section 1851(c)(1) of the Act directs the Secretary to establish a process through which an individual makes an ''election'' to receive Medicare coverage through an MA plan or original Medicare, or to change from one MA plan to another, including the form and manner in which such elections are made. Section 1860D–1(b)(1)(A) of the Act similarly directs the Secretary to establish a process for enrolling in or disenrolling from a PDP, or changing enrollment from one PDP to another. This authority is implemented for MA plans in §§ 422.60, 422.62, 422.66, and 422.74, and for Medicare prescription drug plans in §§ 423.32 and 423.36, as well as in CMS manuals.

In rare instances, CMS is faced with situations in which organizations become insolvent, or are determined to have such serious compliance issues that immediate plan terminations may become necessary. Normally, an organization that elects to non-renew its contract for the following year is required to notify CMS in July of the contract year, several months before the non-renewal takes effect. All beneficiaries enrolled in that plan are required to be notified in early October, providing individuals at least 3 months to evaluate other plan options, and make a plan election for the subsequent year. Consistent with existing regulations and guidance, such elections would normally entail ''active'' measures, such as signing an enrollment form, submitting an on-line enrollment request or calling a plan to enroll.

However, when CMS identifies a situation that requires an immediate plan termination, or other situations in which CMS determines plan members might be harmed by remaining in their current plan, CMS believes that it is in the best interests of beneficiaries to protect those that may not have adequate time to elect a plan due to emergency terminations as well as those unable to, or who otherwise do not, focus on their plan options. In these circumstances, our primary goal is to ensure that minimal harm comes to the beneficiary who fails to act on his or her election options. To achieve this goal, we have determined that it is sometimes appropriate to use ''passive'' enrollment procedures under which an individual is notified that he or she can make an enrollment ''election'' by taking no action. Under these procedures, we strive, when possible, to select plans for individuals that will maintain a level of coverage equal to or better than their current coverage, without incurring

additional costs. We also generally assume that individuals who are currently enrolled in a particular type of coverage, such as prescription drug coverage, would want to maintain this type of coverage. Similarly, we assume that LIS-eligible individuals would prefer a plan where their premiums and deductibles were fully subsidized.

In addition to termination situations, we have provided for ''passive'' enrollment in cases in which a failure to elect the enrollment in question would harm the beneficiary. For example, we have employed passive enrollment in the case of employer group members who would lose employer benefits if they were not passively enrolled. We also have provided for passive enrollment in which the particular plan in which the beneficiary is enrolled was being terminated by CMS due to compliance and insolvency issues, as well as instances when a beneficiary was enrolled in a terminating plan but a similar plan was offered by the same organization with which the beneficiary had already chosen to enroll.

We are proposing to incorporate our current passive enrollment policies in the regulations in a new § 422.60(g) and § 423.32(g). These new provisions would set forth in the regulations that CMS may authorize plans to carry out ''passive'' enrollment procedures in situations involving immediate plan terminations or potential beneficiary harm from remaining enrolled in the beneficiary's current plan. Under these enrollment procedures, individuals will be notified that they will be deemed to have elected the MA or PDP plan selected for them by CMS if they take no action to cancel such enrollment. In conjunction with these provisions, we would set forth several key beneficiary protections that would be required any time such an enrollment would occur. Such protections would include requiring that the organization that is receiving the enrollment notify all prospective enrollees of the passive enrollment prior to the effective date of the passive enrollment or as soon as possible after the enrollment effective date if prior notification is not possible under the circumstances. The notices to the enrollees would be approved by CMS and would explain their right to choose another plan, and describe the costs and benefits of the new plan and how to access care under the plan, as well and any other conditions of enrollment established by CMS.

We would also specify that affected individuals would be entitled to a special enrollment period after their new enrollment took effect, as permitted under §§ 422.62(b)(4) and 423.38(c)(8)(ii).

2. Involuntary Disenrollment for Nonpayment of Premium (§§ 422.74 and 423.44)

The MMA provides individuals with the option to choose to have their premiums for either MA or PDP membership withheld from their Social Security benefit, as described in 42 CFR 422.262(f) and 423.293, respectively. Section 1851(g)(3)(A) of the Act provides Medicare Advantage organizations the option to disenroll members who fail to pay basic and supplemental monthly premiums, as set forth at 42 CFR 422.74(d)(1). Section 1860D–1(b)(1)(B)(v) of the Act makes this provision applicable to PDP sponsors. See 42 CFR 423.44(d)(1).

Although MA organizations and PDP sponsors may disenroll individuals for failing to pay premiums in a timely manner, we believe that such disenrollments should be an option only in cases where individuals pay their required premiums directly to the plan, as opposed to individuals who have chosen to have their premiums automatically withheld from their Social Security benefits. In cases where MA organizations or PDP sponsors are not receiving premiums on a timely basis from members who have chosen the premium withhold option, the member is clearly not at fault if the premium for some reason is not being deducted or paid to the plan properly. Thus, we do not believe that the organization or sponsor should have the option to disenroll a member in that situation. Similarly, individuals who have elected the premium withhold option also should not be subject to disenrollment during the time needed to initially establish premium withhold status on an individual account.

Therefore, we are revising the MA and Part D regulations in § 422.74(d)(1) and § 423.44(d)(1) by adding the cross reference to paragraph (d)(1)(iv) to prohibit plans from disenrolling individuals for failure to pay premiums if they have either requested the premium withhold option or if they are already in premium withhold status. Plans may initiate disenrollments for failure to pay premium only after an individual in ''direct bill'' status has been notified of the premium owed and, in the case of MA plans, provided the grace period required under § 422.74(d)(1)(i)(B), as currently outlined in the MA and Part D regulations discussed above.

3. Disclosure of Plan Information (§§ 422.111 and 423.128)

As provided in section 1852(c)(1) of the Act, MA organizations and prescription drug benefit plan (PDP) sponsors must disclose detailed information about the plans they offer to their enrollees. This detailed information is specified in section 1852(c)(1) of the Act and §§ 422.111(b) and 423.128(b) of the Part C and Part D program regulations, respectively. Sections 422.111(a)(3) and 423.128(a)(3), as well as our Marketing Guidelines require that this information be disclosed at the time of enrollment and at least annually thereafter. In addition, the Marketing Guidelines specify that current enrollees must receive the annual notice of change (ANOC) by October 31 and the evidence of coverage (EOC) annually.

We propose clarifying in §§ 422.111(a)(3) and 423.128(a)(3) that plans must disclose the information specified in §§ 422.111(b) and 423.128(b) of the MA and Part D program regulations, respectively, both at the time of enrollment and at least annually thereafter, 15 days before the annual coordinated election period. Making this clarification is essential to ensuring that current enrollees receive comprehensive information necessary for making an informed decision regarding their health care options prior to the annual coordinated election period.

4. Retroactive Premium Collections and Beneficiary Repayment Options (§§ 422.262 and 423.293)

Routine changes in a beneficiary's plan status (for example, plan switching) or systems issues can result in a need for retroactive premium collections. Many beneficiaries can be financially harmed when required to pay the full amount of a retroactively-due premium in addition to their current month's premium in a single lump sum. Section 1860D–13(c)(1) of the Act states that ''the provisions of § 1854(d) shall apply to PDP sponsors and premiums (and any late enrollment penalty) under this part in the same manner as they apply to MA organizations and beneficiary premiums under Part C.'' Section 1854(d)(1) and (2) of the Act direct MA organizations to permit the payment of MA ''monthly basic, prescription drug, and supplemental beneficiary premiums on a monthly basis'' and ''in accordance with regulations, an MA organization shall permit each enrollee, at the enrollee's option, to make payment of premiums (if any) under this part to the

organization through'' withholding, electronic funds transfer, or ''such other means as the Secretary may specify.''

We believe it would be consistent with these provisions to provide beneficiaries with the option of prorating past due premiums over a period of monthly payments when the reason for the premium arrearage is other than a member's willful refusal to remit the premium. Specifically, we believe that beneficiaries should be able to spread out their obligation over at least the same period for which the premiums were due. That is, if 7 months of premiums are due, the member should have at least 7 months to repay. Accordingly, we propose to amend the MA regulations at § 422.262 by adding new paragraph (h) and the Part D regulations at § 423.293 by revising paragraph (a) to expressly provide for this option.

5. Prohibiting Improper Billing of Monthly Premiums (§§ 422.262 and 423.293)

Under some circumstances operational failures cause CMS payment delays with respect to premiums collected by Social Security withholding. When this has happened, some PDP sponsors and MA organizations have erroneously opted to directly bill members for premiums that the members have requested be withheld from their Social Security payments. Sections 1860D–13(a) (for Part D) and 1854(b) (for Part C) of the Act establish specific formulas (based on annual bidding) for calculation of monthly premiums. Members who have submitted a request that premiums be withheld under section 1860D–13(c) of the Act for Part D or section 1854(d) of the Act for Part C have the right to have their premiums taken only out of their Social Security payments. Therefore, it is impermissible to bill a member for such premiums. Accordingly, we are proposing to revise the MA regulations by adding new paragraph (g) to § 422.262 and the Part D regulations by adding new paragraph (e) to § 423.293, to explicitly prohibit such improper billing. Note that under circumstances when CMS cannot effectuate the premium withhold option for beneficiaries, we will set beneficiaries back to direct bill. In those cases, plans will be able to directly bill beneficiaries for premium amounts owed.

6. Non-Renewal Notification Timelines (§§ 422.506 and 423.507)

Non-renewals of MA or prescription drug plan contracts require the MA organization, the Part D sponsor, or CMS to notify both the enrollees of the organization or sponsor and the general public of the non-renewal. Existing regulations require notification 90 days prior to the effective date of the non-renewal for notification to enrollees and 90 days prior to the end of the calendar year to the general public. The effective date of contract non-renewals in the MA and prescription drug plan programs is January 1st of each calendar year.

Currently, CMS regulations concerning contract non-renewals require that CMS notify an MA organization or a prescription drug plan sponsor (PDP sponsor) of a non-renewal by August 1 of the current contract calendar year. In cases where CMS announces its intention to non-renew an MA organization or a PDP sponsor, the MA organization or PDP sponsor has certain contract appeal rights. Note that in instances where an MA organization or PDP sponsor announces its intent to non-renew its contract with CMS, there is no similar contract appeals process available. Should an MA organization or PDP sponsor decide to pursue an appeal of CMS' decision to non-renew the organization or sponsor's contract, we believe it is appropriate that the appeals process be concluded in time for there to be a final decision on the non-renewal, and for there to be sufficient time for the enrollees and the general public to be notified of a contract non-renewal prior to January 1 of the following year. Presently, the 90 day notice requirement requires contract non-renewal appeals process to be completed in only 60 days (from August 1st which is the date of notification of non-renewal, until October 1st,in order for the notice period to have run prior to January 1st). Our experience is that the contract non-renewal appeals process is likely to extend beyond 60 days. For this reason, we propose revising § 422.506(a)(2)(ii), (a)(2)(iii), (b)(2)(ii), and (b)(2)(iii) of the MA regulations and § 423.507(a)(2)(ii), (a)(2)(iii), (b)(2)(ii) and (b)(2)(iii) of the Part D regulations, to change the beneficiary and public notice requirement from at least 90 days to at least 60 days, thus allowing more time for the contract non-renewal process to conclude, while still allowing for a sufficient beneficiary notice period, prior to January 1st. This change will help ensure that all termination decisions are final, prior to the start of marketing and enrollment activities.

CMS also believes that a 60 day notification requirement better aligns itself with other important CMS notification and election requirements. For example, CMS currently requires that all MA organizations and PDP sponsors provide annual notice of change (ANOC) documents to enrollees of Medicare private health plans by October 31st of each year. As mentioned previously, the annual election period runs from November 15th to December 31st of each year. By changing the enrollee notification timeframe from 90 to 60 days, beneficiaries will receive notice of a pending contract non-renewal during the same time period when beneficiaries are making important Medicare coverage decisions for the upcoming calendar year. A 60 day notification period is a sufficient amount of time for enrollees to review other plan options and to make an election for enrollment into a plan for the following calendar year.

7. Reconsiderations (§§ 422.578, 422.582, 423.560, 423.580)

We are proposing changes to the reconsideration process for both the MA and prescription drug benefit programs. The overall changes to the first level appeal process will be the same for both programs. However, we discuss the proposed revisions for each program separately because the proposed revisions would vary slightly due to program differences.

a. Medicare Advantage Program (§§ 422.578 and 422.582)

Under section 1852(g)(3)(A)(ii) of the Act and §§ 422.578 and 422.584 of the regulations, a physician, without regard as to whether the physician is treating the enrollee, is permitted to request an expedited plan reconsideration on behalf of an enrollee without having to be appointed by the enrollee as his or her representative. However, in order to request a standard pre-service plan reconsideration under §§ 422.578 and 422.582, a physician must have been appointed as the enrollee's representative, or be authorized by State law or other applicable law to act on behalf of the enrollee. We are proposing to revise § 422.578 and 422.582 to permit an enrollee's treating physician to request a standard plan reconsideration of a pre-service request on an enrollee's behalf without having been appointed by the enrollee as his or her representative.

Section 1852(g)(2) of the Act states that an MA organization ''shall provide for reconsideration of a determination described in paragraph (1)(B) upon request by the enrollee involved.'' Although the statute does not expressly give any individual other than the enrollee the right to request a standard plan reconsideration, we have long permitted an enrollee to appoint a representative (for example, an attorney or family member) to file a request on

behalf of an enrollee. In addition, when an individual is authorized under State law or other applicable law to act on the beneficiary's behalf, such an individual is also permitted to request a plan reconsideration on the enrollee's behalf.

With respect to a physician's request for a standard plan reconsideration, the current regulations draw a distinction between a physician who is requesting an organization determination on behalf of an enrollee regarding coverage of services that have not been provided, and a request involving services that the physician has furnished. In the latter case, under § 422.574(b), if the physician has furnished a service to an enrollee and formally waives any right to payment from the enrollee for that service, he or she becomes a ''party'' to the organization determination, and may, under § 422.578, request a standard plan reconsideration (1st level appeal) without being appointed by the enrollee as a representative. This is a third instance in which someone other than the enrollee can request a standard plan reconsideration.

After a number of years experience with the Part C program, we believe it is appropriate to revise the regulations to add a fourth circumstance under which an individual other than an enrollee can request a standard plan reconsideration on the enrollee's behalf. Specifically, we propose to allow the enrollee's physician, who the enrollee has already selected to provide treatment, to request standard plan reconsiderations on his or her patient's behalf without having been appointed as the enrollee's representative. We believe that an enrollee's treating physician already has been selected by the enrollee and occupies a position of trust. We also believe that as a treating physician, he or she is in a good position to know whether a request for plan reconsideration is warranted, and in the enrollee's interests. We have found that in some cases, requiring that the physician take the step of being appointed by the enrollee is a burden that does not serve the enrollee's interests.

We are proposing that the physician must be able to demonstrate that he or she is treating the enrollee in question in order to request a plan reconsideration on the enrollee's behalf, and would be required to notify the enrollee that he or she is taking this action.

We are not proposing to allow physicians who are not acting as an enrollee's representative to request appeals on behalf of enrollees beyond the plan level, as we believe that the enrollee should be directly involved in a decision to disclose his or her private health information to appeals adjudicators beyond the plan level of appeal because those adjudicators do not have the same relationship with the enrollee that the plan has.

b. Prescription Drug Benefit Program

i. Definitions (§ 423.560)

We propose to revise the regulation text of § 423.560 by adding a new definition for ''other prescriber.'' This term encompasses health care professionals, other than physicians, with the requisite authority under State law or other applicable law to write prescriptions for Medicare beneficiaries. In conjunction with this proposed new definition, we propose to add ''or other prescriber'' after ''prescribing physician'' or ''physician'' throughout subpart M of part 423 in order to authorize these other prescribers to perform the same functions that prescribing physicians are allowed to perform with respect to the coverage determination and appeals processes as set out in subpart M of part 423.

Sections 1860D–4(g) and (h) of the Act establish the role of the ''prescribing physician'' in the coverage determination and appeals processes. Specifically, under section 1860D–4(g) of the Act, an enrollee may request an exception to a tiered cost-sharing structure such that a non-preferred drug could be treated as a preferred drug if the prescribing physician ''determines that the preferred drug for treatment of the same condition either would not be as effective for the individual or would have adverse effects for the individual, or both.'' Section 1860D–4(h) of the Act provides that an enrollee may appeal a determination not to provide coverage for a Part D covered drug that is not on the plan's formulary ''only if the prescribing physician determines that all covered Part D drugs on any tier of the formulary for treatment of the same condition would not be as effective for the individual as the nonformulary drug, would have adverse effects for the individual, or both.'' However, sections 1860D–4(g) and (h) of the Act are silent on the role of other health care professionals who have prescribing authority under State law or other applicable law.

As the statute reflects, the Congress recognized the important role a prescribing physician plays in the coverage determination and appeals processes. In particular, a prescribing physician is especially well qualified to assist Part D enrollees with certain aspects of the coverage determination and appeals processes. Because sections 1860D–4(g) and (h) of the Act are silent on the role of other health professionals who have prescribing authority under State law or other applicable law, an enrollee who has his or her prescription written by a non-physician prescriber arguably does not currently have the same protections and assistance in the coverage determination and appeals processes as an enrollee whose prescription is written by a physician. Based on program experience gained since the inception of the Part D program, and recognizing that there are other categories of health care providers who are authorized under State law or other applicable law to prescribe drugs for Part D enrollees, we are proposing to allow non-physician prescribers to perform the same functions as physicians for purposes of subpart M of part 423.

This proposed change would ensure that enrollees who have prescriptions written by non-physician prescribers are afforded all of the same protections and assistance in the coverage and appeals processes that are currently available to enrollees whose prescriptions are written by a physician. For example, under § 423.566(c), an enrollee's prescribing physician is permitted to request an expedited or a standard coverage determination on the enrollee's behalf without being his or her representative. Under this proposal, a nurse practitioner or other health care professional who is authorized under State law or other applicable law to write prescriptions would be able to request an expedited or standard coverage determination on behalf of the enrollee. We believe this proposal would ensure that all Part D enrollees have the same protections and access to assistance in the coverage determination and appeals processes, notwithstanding the type of health care professional who writes their prescription.

ii. Right to a Redetermination (§ 423.580)

We propose to revise the regulation text of § 423.580 to provide prescribing physicians and other prescribers with the ability to request standard redeterminations on behalf of enrollees, and require them to notify enrollees that they are taking this action.

Section 1860D–4(g) of the Act requires Part D plan sponsors to ''meet the requirements of paragraphs (1) through (3) of section 1852(g) with respect to covered benefits under the prescription drug plan it offers under this part in the same manner as such requirements apply to an MA organization with respect to benefits it offers under an MA plan under Part C.''

Sections 1852(g)(1) through (g)(3) discuss the requirements for standard and expedited organization determinations and plan reconsiderations by MA organizations.

Under current §§ 423.580–423.584, an enrollee's prescribing physician is permitted to file an expedited redetermination on the enrollee's behalf without being his or her representative, but cannot request a standard redetermination without being the enrollee's representative. In accordance with section 1860D–4(g) of the Act, this limitation was carried over from §§ 422.578 and 422.582 of the Medicare Advantage regulations. However, as discussed above, in this proposed rule, we are proposing to revise §§ 422.578 and 422.582 of the regulations to allow non-representative physicians to request standard plan reconsiderations of pre-service requests on behalf of enrollees in MA appeals. In conjunction with that proposed change, and consistent with the requirement under section 1860D–4(g) of the Act that plan redeterminations under Part D be provided in the same manner as plan reconsiderations under Part C, we propose to revise §§ 423.580 and 423.582 to be consistent with our proposed changes to §§ 422.578 and 422.582. However, under Part D, we are not carrying over the limitation from proposed § 422.578 that would prevent a prescribing physician from requesting a standard plan-level appeal for payment. Unlike under Part C, prescribing physicians do not have a financial interest in the payment of Part D claims. Thus, we believe prescribing physicians may make requests for payment on behalf of enrollees under Part D. In addition, consistent with our proposal to afford non-physician prescribers the same authority to assist beneficiaries in the coverage determination process as prescribing physicians, we also propose to allow other prescribers to request plan redeterminations on behalf of enrollees.

8. Civil Money Penalties (§§ 422.760 and 423.760)

CMS may impose civil money penalties (CMPs) on MA organizations and Part D sponsors for certain regulatory offenses, as described in subpart O of both 42 CFR 422 and 42 CFR 423. Section 1857(g)(3)(A) and section 1860D–12(b)(3)(E) of the Act provides CMS with the ability to impose CMPs of up to $25,000 per determination (determinations are those which could otherwise support contract termination, pursuant to §§ 422.509 or 423.510) when the deficiency on which the determination is based adversely affects or has the substantial likelihood of adversely affecting an individual covered under the organization's contract. The current regulations essentially echo the Act's wording with respect to the amount of the penalty that CMS may impose. However, the statute and the existing regulations shed little light on how to determine whether a series of incidents or events, or a single event that individually impacts multiple enrollees, constitutes a single determination or multiple determinations which could justify the calculation of a larger total penalty.

It is possible that one incident could negatively affect multiple enrollees, which would provide a justification for the CMP amount to potentially be greater than a CMP based on an event that only affects a few beneficiaries. For example, the failure of an organization or sponsor to timely issue annual notice of change (ANOC) documents would be a one-time incident that has the potential to have adverse consequences for a large number of enrollees. CMS believes it is appropriate for the specific factors to be considered in calculating a total CMP, such as the number of enrollees affected or potentially affected, whether the ANOCs were significantly delayed (resulting in a substantial decrease in the amount of time an enrollee had to determine whether or not to stay in their plan), or an additional factor was involved that further adversely affected the enrollees.

Similarly, one or a small group of marketing agents perpetrating similar misrepresentations over a period of time could constitute a series of incidents or events that CMS believes should be considered in calculating a total CMP. If one agent or several agents are misrepresenting plan benefits, the agent(s) may be repeating the same misrepresentation on multiple occasions and to multiple enrollees. Each time an agent misrepresents the plan's benefits and the enrollee is adversely affected or potentially adversely affected by such inaccurate statements, a determination justifying a CMP could be made based on each enrollee affected by the agent's actions.

Given that the Act requires that the deficiency on which the determination is based must have adversely affected or have the substantial likelihood of adversely affecting an individual covered under the organization's contract, CMS believes that a CMP may be calculated based on each enrollee covered under the organization's contract adversely affected or potentially adversely affected by the organization's conduct. The statute clearly specifies that CMPs may be levied at amounts up to but not exceeding $25,000 per determination. We propose to clarify our regulations relating to CMPs in both 42 CFR 422.760 and 42 CFR 423.760 by adding paragraph (b)(2) of the respective sections to state that CMS may impose a penalty of not more than $25,000 for each enrollee covered under the organization's contract that is adversely affected or substantially likely to be adversely affected by the organization's deficiency (or deficiencies). When determining the amount of a penalty per determination, up to the $25,000 maximum, we will continue to take into account factors such as the severity of the infraction, the evidence supporting the infraction, the amount of harm caused to the Medicare beneficiary, and the organization's past conduct. These factors combined will assist us in determining the amount per affected beneficiary that the organization should be penalized.

CMS believes this clarification is necessary for both MA organizations and Part D sponsors to fully appreciate the consequences of noncompliance with applicable program requirements. An MA organization or Part D sponsor's conduct that adversely affects a significant number of Medicare beneficiaries may have a significant financial impact on the organization. Our proposed change is aimed at protecting enrollees by clarifying that penalties can be substantial for noncompliance.

Adding the option of assessing CMPs at the level of each enrollee covered under the organization's contract—to CMS' existing authority, which enables the Agency to continue to levy CMPs at the ''per contract'' level—provides necessary flexibility for CMS to better match CMP amounts to the specific nature of the determination that warrants a CMP. However, we acknowledge that there may be alternative or additional approaches to the ''per beneficiary'' and ''per contract'' schema described here that would likewise meet the Agency's goals of providing meaningful penalties that deter violations of Medicare program requirements and protect Medicare beneficiaries. For example, tying CMP amounts to the number of days that violations existed may likewise be an effective approach for assessing meaningful CMPs. We therefore seek comments on our proposed clarification as well as whether any other approaches would more effectively deter MA organizations and Part D sponsors from engaging in conduct which is in violation of CMS requirements. We also seek comment as to the appropriate

monetary range for CMPs imposed on MA organizations and Part D sponsors and as to whether some upper limit should exist on the total amount of a penalty imposed on an organization when a deficiency has adversely impacted a large number of enrollees covered by an MA organization or Part D sponsor.

9. Medicare Advantage and Prescription Drug Program Marketing Requirements (Proposed New Subparts V)

a. General

Section 1851 of the Act sets forth provisions relating to beneficiaries making choices as to how they want to receive their Medicare benefits. Specifically, it addresses the provision of information to beneficiaries on their Medicare health care options, the marketing of such health care options, and the timing and method for making a choice among health care options, and enrollment in, disenrollment from, or a change in, the health care option of the beneficiary's choice.

Sections 1851(h)(1) through (5) of the Act govern the marketing of MA plans to Medicare beneficiaries by MA organizations. Section 1851(h)(1) of the Act requires that marketing material be submitted to CMS for approval before it is used, and provides for deemed approval after 45 days (or 10 days in certain cases) if CMS does not disapprove the material. Section 1851(h)(2) provides for CMS to establish ''standards'' for the review of marketing material, and requires that material be disapproved if it ''is materially inaccurate or misleading or otherwise makes a material misrepresentation.''

Section 1851(h)(3) of the Act provides that material approved for use in one geographic area is deemed approved in other areas except with respect to material specific to the area involved, and section 1851(h)(5) of the Act provides that if model language approved by CMS is used, it can be used only 10 days after submitting it to CMS for approval. Finally, section 1851(h)(4) of the Act requires that MA organizations conform to ''fair marketing standards,'' including those established by CMS by regulation, and requires that such standards prohibit an MA organization from providing for cash or rebates as an inducement to enroll, or otherwise, and may include a prohibition on an MA organization or its agent filling out an enrollment form for individuals. With respect to marketing by PDP sponsors, section 1860D–1(B)(1)(vi) of the Act requires CMS to use rules ''similar to (and coordinated with)'' the foregoing marketing rules set forth in section 1851(h). Regulations at §§ 422.80 and 423.50 and detailed operational guidance found in ''*The Medicare Marketing Guidelines for Medicare Advantage plans, Medicare Advantage prescription drug plans, prescription drug plans, and 1876 cost plans*,'' second revision dated July 25, 2006 (hereinafter referred to as ''Marketing Guidelines''), are the current standards by which MA organizations and Part D sponsors must meet in their marketing to eligible individuals regarding their plan choices. In developing these standards, CMS recognized that establishing fair marketing standards encompasses more than CMS approval of marketing materials. It also includes the development of standards related to the dissemination of information through a wide variety of media forms (for example, advertisements and Web sites) and MA organization or Part D sponsor (or their agents') conduct when attempting to persuade a beneficiary to enroll in a particular plan. Both the regulations and the Medicare Marketing Guidelines prohibit organizations from conducting marketing activities that would result in generating misleading information to Medicare beneficiaries.

In order to implement standards consistent with ''fair marketing'' practices in accordance with sections 1851(h) and 1860D–1(b)(1)(B)(vi) of the Act, and to ensure beneficiaries receive the necessary information to make informed choices during the annual election period, we propose to amend and expand our marketing regulations for both the MA and the Part D programs. Moreover, due to the proposed addition of new marketing provisions and the need to clarify current marketing regulations, we propose to remove §§ 422.80 and 423.50 of subpart B, which currently specify the requirements related to the approval of marketing materials and instead include this core of our marketing requirements in a new subpart V of 42 CFR 422 and 423 specific to the marketing regulations for each program.

b. Marketing Materials and Marketing Requirements

i. Definitions Concerning Marketing Materials (§§ 422.2260, 423.2260)

We are making an organizational change for this section consistent with our proposal to create a new subpart V of 42 CFR 422 and 423 specific to marketing. We are moving the definition of marketing materials to §§ 422.2260 and 423.2260 of the Part C and D program regulations, respectively.

ii. Review and Distribution of Marketing Materials: File and Use (§§ 422.2262, 423.2262)

In addition to moving our requirements concerning the approval of marketing materials and election forms to §§ 422.2262 and 423.2262 of the Part C and D program regulations, respectively, we are proposing to modify the ''file and use'' review process.

While the statute requires the submission of marketing materials to CMS for a 45-day period of CMS review, based on years of program experience CMS recognized that some MA organizations consistently met all marketing standards, and that their marketing materials warranted less scrutiny. CMS accordingly established a file and use policy that was designed to streamline the marketing materials approval process for these MA plans. Under this file and use policy, Medicare health plans that demonstrated to the satisfaction of CMS that they continually met a particular high standard of performance were able to publish and distribute certain marketing materials within 5 days of submission to CMS under section 1851(h)(1), without waiting for a response from CMS.

In effect, these materials were deemed approved by CMS after 5 days based on CMS's prior review of earlier materials. The criteria in order to be eligible for the original file and use policy were that a contracting entity had to have submitted at least eighteen months of marketing materials for CMS review, and at least ninety percent of the materials submitted within the past six months had to meet applicable marketing standards.

In the regulations implementing the MMA, CMS adopted a separate file and use policy that was based on the nature of the marketing materials in question, rather than the track record of the MA organization or PDP sponsor. Under this policy, an MA organization or PDP sponsor certifies that it is using either model language already reviewed and approved by CMS, or types of marketing materials that CMS has identified as not containing substantive content. As with the original policy that focused on the organization, the materials covered by this new file and use certification policy could be used 5 days after submission, without any explicit approval from CMS. In the case of MA organizations, this certification is made at the time of submission, while PDP sponsors are permitted to so certify in their contracts.

In order to level the playing field among contractors, eliminate redundancies, and focus resources on

materials that have content that warrants CMS scrutiny, we are proposing to eliminate file and use status based on an organization's track record, and apply a uniform policy of applying the file and use policy to marketing materials that either use model language without substantive modification, or materials that are identified by CMS as not containing substantive content warranting CMS review. The same approach to certifying that these types of materials are being used would apply for both Part C and Part D contractors. We would include the proposed file and use provision in § 422.2262(b) and § 423.2262 (b) of the MA and Part D programs, respectively.

iii. Guidelines for CMS (§§ 422.2264, 423.2264)

We are making an organizational change for this section consistent with our proposal to create a new subpart V of 42 CFR 422 and 423 specific to marketing regulations. We are moving §§ 422.80(c) and 423.50(d), which describe specific guidelines for CMS review of marketing materials and election forms, to §§ 422.2264 and 423.2264, respectively.

iv. Deemed Approval (§§ 422.2266, 423.2266)

Consistent with our proposal to create a new subpart V of 42 CFR 422 and 423 specific to marketing regulations, we are making an organizational change for this section. We are removing §§ 422.80(d) and 423.50(e) and creating §§ 422.2266 and 423.2266, respectively. The provision concerns CMS' deemed approval of the distribution of marketing materials.

v. Standards for MA and PDP Marketing (§§ 422.2268, 423.2268)

We are making an organizational change for this section consistent with our proposal to create a new subpart V of 42 CFR 422 and 423 specific to marketing regulations. We are removing §§ 422.80(e) and 423.50(f) and creating §§ 422.2268 and 423.2268, respectively.

vi. Licensing of Marketing Representatives and Confirmation of Marketing Resources (§§ 422.2272, 423.2272)

In response to questions from the Part D industry regarding state licensure of marketing representatives, CMS adopted in its Marketing Guidelines the requirement that MA organizations and Part D sponsors that conduct marketing through independent agents use state-licensed, certified, or registered individuals to do so, if a state licenses such agents. The use of only state-licensed marketing representatives helps ensure that the marketing representatives meet minimum standards of integrity and professionalism in order to market to Medicare-eligible beneficiaries. This Medicare requirement permits Medicare to benefit from State efforts to deny licensure to under-educated, unscrupulous or otherwise substandard individuals, and helps ensure that Medicare beneficiaries are not the victims of substandard or inappropriate marketing activities.

Based on the experience we have gained since the start of the Part D program, and continued experience with the Medicare Advantage program, we propose to codify in the regulation our existing requirement that MA organizations and Part D sponsors utilize only State-licensed marketing representatives to do marketing where they use independent agents in the States that license such agents.

We further propose to add a regulatory requirement to §§ 422.2272 and 423.2272 that MA organizations and PDP sponsors that market through independent agents not only be required to use licensed agents, but would be required to report to States that they are using such agents, in a manner consistent with State appointment laws. State appointment laws require MA and PDP sponsors to appoint marketing representatives before the agent can market a plan's product. Appointment laws may require an insurance plan to maintain a registry of marketers who sell their plans, including maintaining a list of license numbers, dates the individual began selling policies for the insurance company, and stopped selling plans for the insurance company. While we previously required only that licensed agents be used, and did not require that the appointment of such agents be reported to the State agency that regulates agents, we believe this latter requirement would enable States to monitor the agents' activities in connection with their Medicare marketing for the purpose of monitoring the agent's fitness to engage in marketing in the State. We believe Medicare beneficiaries would benefit from this State monitoring.

More specifically, we recognize that, under the preemption provisions in section 1856(b)(3) of the Act (incorporated for PDPs under section 1860D–12(g)), States do not have the authority to regulate the marketing of Medicare Part C and D plans. However, as noted, any abuses by an agent in marketing such plans would have direct relevance to the State's oversight of the agent generally, and implications for the agent's marketing of products over which the state has jurisdiction, and Medicare beneficiaries would benefit from having the agents who engage in Medicare marketing subject to this state oversight. Because State laws requiring compliance with an appointment law with respect to Medicare Part C and Part D marketing are pre-empted, however, we do not believe that any fees that would be charged in connection with a State appointment law would apply. Rather, we would limit the requirement to complying with only those aspects of State appointment laws that provide for giving the state information about which agents are marketing the Part C and D plans.

In the context of the requirement that MA organizations and Part D sponsors utilize only State-licensed marketing representatives, and report the appointment of such agents to States consistent with the procedures under State appointment laws, it is important to discuss the activities that would not trigger the need for using State-licensed marketing representatives. As standard practice, MA organizations and Part D sponsors employ customer service representatives who answer questions and accept enrollments on behalf of enrollees who have decided to enroll in a particular plan offered by the organization. We recognize that plan customer service representatives play an important role in disseminating information by answering factual questions posed by beneficiaries, and that such an activity is distinguishable from the act of steering to a plan (''marketing,'' as defined in the Medicare Marketing Guidelines).

Additionally, taking demographic information from someone who has decided to enroll in the plan, in order to complete an application, is not steering in that the beneficiary has already made a choice to enroll in a plan. Accordingly, we believe providing factual information, fulfilling a request for materials, and taking demographic information in order to complete an enrollment application at the initiative of the enrollee by a customer service representative, are legitimate customer service activities that would not trigger the need for using State-licensed marketing representatives.

In addition, we also propose to clarify in §§ 422.2268 and 423.2268 several standards for MA and PDP organization marketing. In §§ 422.2268(d) and 423.2268(d) we clarify that the prohibition on door-to-door solicitation includes other unsolicited instances of direct contact, such as outbound calling without the beneficiary initiating contact. We believe this clarification

would help prevent inappropriate conduct on the part of agents in aggressively pursuing the marketing of Part C and D plans to beneficiaries (for example, approaching beneficiaries directly in parking lots) outside of approved common areas that may be used for marketing displays and presentations. We would also clarify in §§ 422.2268(l) and 423.2268(l) that plans may not engage in sales activities, including the distribution or collection of plan applications, at educational events. These events may be sponsored by plan(s) or by outside entities, and are events that are promoted to be educational in nature and have multiple vendors, such as health information fairs, conference expositions, state-or community-sponsored events, etc. In §§ 422.2268(k) and 423.2268(k) we clarify that sales activities are only permitted in common areas of health care settings (for example, hospital cafeterias or conference rooms), and would be prohibited in areas where patients primarily intend to receive health care services (for example, waiting rooms and pharmacy counter areas). The term ''health care setting'' refers to all settings where providers operate, including but not limited to pharmacies, physicians offices, hospitals, and long-term care facilities.

We further propose several regulatory requirements in §§ 422.2268 and 423.2268, providing additional protections to ensure beneficiaries are not the victims of inappropriate marketing techniques. These include a new requirement in §§ 422.2268(b) and 423.2268(b) under which organizations would be required to limit the types of promotional items offered to potential enrollees (examples of acceptable items include pens, pill boxes and jar openers) and the value of such items to a nominal amount, established by CMS in operational guidance, and may not provide meals, regardless of value. (Refreshments are allowed, such as coffee, soft drinks, and snacks.) In §§ 422.2268(f) and 423.2268(f), we also propose to prohibit the cross-selling, in any MA or Part D sales activity or presentation, of non-health care-related products to a prospective enrollee. Marketing to current plan members of health care and non-health care-related products would also remain subject to HIPAA rules. In §§ 422.2268(g) and 423.2268(g), we are proposing to limit any appointment with a beneficiary involving marketing of health care-related products (for example, whether Medicare supplement, Medicare Advantage, stand-alone PDP will be discussed) to the scope agreed upon by the beneficiary. In advance of any marketing appointment, the beneficiary must have the opportunity to agree to the range of choices that will be discussed, and that agreement must be documented by the plan. Under proposed §§ 422.2268(h) and 423.2268(h), additional lines of plan business not identified prior to the in-home appointment would require a separate appointment that could not be re-scheduled until 48 hours after the initial appointment. An additional beneficiary protection, proposed in §§ 422.2268(n) and 423.2268(n), would limit the use of names and/or logos of co-branded network providers on plan membership and marketing materials. This proposed requirement will reduce the tendency of members to mistakenly believe they must use the co-branded network provider in order to obtain plan benefits.

vii. Broker and Agent Requirements (§§ 422.2274, 423.2274)

Section 1851(h)(2) of the Act requires us to establish marketing standards for Medicare Advantage (MA) plans and under section 1860D–1(b)(1)(B)(vi) of the Act, Medicare prescription drug benefit plans (PDP), to ensure that beneficiaries are not misled or provided inaccurate information. Since the passage of the MMA, CMS has not specified standards in the regulation pertaining to the way brokers or agents (herein after referred to as ''agents'') who are used to market MA plans and PDPs are compensated. Currently, the Marketing Guidelines allow agent compensation to vary based on the level of effort and the plan product type.

Agents selling MA and PDP products play a significant role in providing guidance and advice to beneficiaries when selecting health plan options. This unique position allows them to influence beneficiary choices. The current compensation structure in the Marketing Guidelines has the potential to create a financial incentive for agents to only market and enroll beneficiaries in some plan products and not others. Based on our experience since the passage of MMA, this compensation structure has lead some agents to encourage beneficiaries to enroll in products that may not meet the beneficiaries' health needs but pays the agents the highest commission. In addition, there is a potential financial incentive for agents to encourage beneficiaries to change plans each year. Therefore, in order to prevent agents from unnecessarily moving beneficiaries from plan to plan and to ensure that beneficiaries are receiving the information and counseling necessary to select the best plan based on their needs, CMS intends to establish guidelines for agent compensation.

We propose to add §§ 422.2274(a)(1) and (a)(2) and 423.2274(a)(1) and (a)(2) to include these requirements. Specifically CMS would require MA organizations and PDP sponsors to adopt a commission structure in which:

- The commission or other compensation (collectively referred to as ''commission'') to an agent or representative in the first year may not exceed the commission the agent would receive for selling or servicing the policy in all subsequent years.
- The commission must be the same for all plans and all plan product types offered by the organization's or sponsor's parent. Each organization offering MA and MA–PD products must establish a single commission that may not vary based on the premium of the plan or any other measure and apply this flat fee commission to all products. Each sponsor offering PDP products must establish a single commission that may not vary based on the premium of the plan or any other measure and apply this flat fee commission to all products.

Additionally, to ensure beneficiaries are getting the information necessary to make informed decisions, it is critical that agents are trained on Medicare rules, regulations and compliance-related information on the plan products they intend to sell. In addition to the training, we propose to require that agents pass a written test to demonstrate their knowledge of the Medicare program and the plan specific products they intend to sell. We expect MA organizations and PDP sponsors to develop training modules and written or electronic tests based on CMS guidelines. MA organizations and PDP sponsors may also use or accept the training modules and written or electronic tests of third parties or other MA organizations or PDP sponsors. CMS has reviewed sophisticated training and testing software of two major entities offering third party testing. The testing software included important controls to ensure the integrity of the testing. The testing software includes questions developed by test development experts. In addition the software has the ability to generate new questions for agents that require re-testing. CMS will review the training modules and tests during routine or focused monitoring visits. This will ensure that agents fully understand the products they are marketing and selling, that they are providing accurate plan information and are able to provide the best plan recommendations to beneficiaries.

We propose to establish guidelines for agent training and testing and require, at CMS request, the reporting of marketing related information. We propose to include these requirements at §§ 422.2274 and 423.2274. Specifically CMS would—

- In 422.2274(b) and 423.2274(b), require MA organizations and PDP sponsors to train all agents selling Medicare products on Medicare rules, regulations and compliance-related information.
- In 422.2274(c) and 423.2274(c), require agents selling Medicare products to pass written or electronic tests on Medicare rules, regulations and information on the plan products they intend to sell.
- In 422.2274(d) and 423.2274(d), require MA organizations and PDP sponsors to provide to CMS the information designated by CMS as necessary to conduct oversight of marketing activities.
- In 422.2274(e) and 423.2274(e), require MA organizations and PDP sponsors to comply with State requests for information about the performance of licensed agents or brokers as part of a State investigation into the individual's conduct. CMS will establish and maintain a memorandum of understanding (MOU) to share compliance and oversight information with States that agree to the MOU.

We believe these proposed changes would enable beneficiaries to receive up-to-date information to help them select the best plan. In addition, the proposed changes would ensure that agents receive adequate training to market Medicare products, create a standard agent compensation structure and eliminate the financial incentives to encourage beneficiaries to enroll in a plan that may not be in the beneficiaries' best interest.

viii. Employer Group Retiree (§§ 422.2276, 423.2276)

We are making an organizational change for this section consistent with our proposal to create a new subpart V of 42 CFR 422 and 423 specific to marketing regulations. We are removing §§ 422.80(f) and creating §§ 422.2276 and, because the provision applies as well to the Part D program, adding new § 423.2276 to Part 423.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

Section 422.4 Types of MA Plans

Section 422.4(a)(1)(iv)(B) states that MA organizations offering disproportionate percentage SNPs must limit new enrollment of non-special needs members to no more than 10 percent of new enrollees, and that at least 90 percent of new enrollees must be special needs individuals as defined in § 422.2.

The burden associated with this requirement is the time and effort put forth by the MA organization to monitor the percentage of non-special needs individuals in the SNP and ensure that this level remains below the established threshold. It will take one MA organization an initial burden of 2 hours to comply with this requirement. Therefore, with 176 disproportionate percentage SNPs in the market, the initial burden associated with this requirement is 352 hours.

We estimate it would take one MA organization an additional burden of 1 hour/week to comply with this requirement on an ongoing basis for a total annual burden of 52 hours/year. We estimate 176 MA organizations would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 9152 hours.

Section 422.52 Eligibility To Elect an MA Plan for Special Needs Individuals

Section 422.52(g) requires a SNP to establish a process to verify the Medicaid eligibility and special needs status of an individual prior to enrolling the individual in a form and manner specified by CMS. This may require collaborative meetings between MA plan staff and State Medicaid staff to establish the process. This process could include calling the Medicaid eligibility verification system (EVS) and reviewing appropriate used to determine an individual's special need.

The burden associated with this requirement is the time and effort put forth by the SNP to establish a process and to verify eligibility. We estimate it would take one SNP approximately (4680 minutes/78 hours) to comply with this requirement. The total number of respondents affected would be 776 SNPs; therefore, the total annual burden is estimated to be 60,000 hours.

Section 422.60 Election Process

Section 422.60(g)(2) requires the organization that receives the enrollment to provide notification that describes the costs and benefits of the plan and the process for assessing care under the plan. The notification must be provided to all potential enrollees prior to the enrollment effective date (or as soon as possible after the effective date if prior notice is not practical), in a form and manner determined by CMS. Providing notification may include mailing a brochure or fact sheet with the aforementioned information and contacting potential enrollees to respond to any questions regarding the mailer.

The burden associated with this requirement is the time and effort put forth by the organization to provide notification that meets the requirements specified by CMS. We estimate it would take one MA (30 minutes/.5 hours) to comply with this requirement. The total number of organizations affected is 5; therefore, total annual burden hours associated with the requirement is 2.5 hours.

Section 422.101 Requirements Relating to Basic Benefits

Section 422.101(f)(1) states that MA organizations offering special needs plans must have a model of care plan specifying how the plan will coordinate and deliver care designed for the plan's enrollees. The model of care plan would be developed by the deliberations of the appropriate staff of the MA organization and maintained in a written document.

The burden associated with this requirement is the time and effort put forth by the special needs plans to establish a model that meets the requirements specified under Section 422.101(f)(1). We estimate it would take one special needs plan 24 hours for six months to meet this requirement. We estimate 335 special needs plans would be affected by this requirement annually; therefore, the total annual burden associated with the requirement is 8,040 hours.

Section 422.103 Benefits Under an MA MSA Plan

Section 422.103(e) requires all MA organizations offering MSA plans to provide enrollees with available information on the cost and quality of services in their service area, and to submit to CMS for approval a proposed approach to providing such information. The burden associated with this requirement is the time and effort put forth by the MA organization offering MSA plans to provide information to enrollees and to submit the proposed approach to providing such information to CMS. About 3,300 Medicare beneficiaries are enrolled in Medicare MSA plans in 2008.

We expect that the burden upon health plans to develop cost and quality data for use by MSA enrollees would depend upon what data is available in their area. As stated in the preamble, we expect that organizations that already have mechanisms in place in connection with their commercial lines of business for providing their beneficiaries with cost or quality information could offer similar services to Medicare beneficiaries. We estimate that 20 MA plans may wish to participate as MSAs in 2009, which would be double the number participating in 2008.

We estimate the burden associated with this requirement in term of time and effort necessary for the plan to develop the information and to submit this information to CMS as a start-up cost of 100 hours per plan to develop this information for a total of 2,000 hours in the first year the plan participates as an MSA plan, with half of that cost occurring in subsequent years for plans to maintain and update this information. In addition, expected additional entry by plans in future years would add start-up costs in the initial year that plans enter.

Section 422.107 Special Needs Plans and Dual Eligibles: Arrangements With States

Section 422.107(a) states that an MA organization seeking to offer or currently offering a special needs plan primarily serving beneficiaries eligible for both Medicare and Medicaid (dual eligible SNPs) must have a documented relationship with the State Medicaid agency for the State in which the SNP is operating. At a minimum, documented arrangements must include the means to (1) verify enrollees' eligibility for both Medicare and Medicaid, identify and share information on Medicaid provider participation, and (3) identify Medicaid benefits which are not covered by Medicare. Medicare Advantage organizations and the respective states may choose to document their relationship in a variety of ways, such as a memorandum of agreement (MOA), a memorandum of understanding (MOU), or a contract.

The burden associated with this requirement is the time and effort put forth by each special needs plan to have a documented relationship. We estimate it would take one special needs plan 18 hours for 6 months to comply with this requirement. We estimate 460 special needs plans would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 8,280 hours.

Section 422.504 Contract Provisions

Section 422.504(g)(1) states that each MA organization must adopt and maintain arrangements satisfactory to CMS to protect its enrollees from incurring liability for payment of fees that are the legal obligation of the MA organization. This may be done by the establishment of identified liaison staff of the MA plan and the State Medicaid agency, and by conducting regular meetings for the purpose of enrollee review.

The burden associated with this requirement is the time and effort put forth by the MA plan to adopt and maintain arrangements. We estimate it would take one MA plan 208 hours to comply with this requirement. We estimate 3400 plans would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 707,200 hours.

Section 422.2260 Definitions

Section 422.2260 defines the marketing materials that an MA organization must provide to Medicare beneficiaries. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

422.2262 Review and Distribution of Marketing Materials

Section 422.2262(a)(1)(i) states that at least 45 days before the date of distribution the MA organization submits the material or form to CMS for review under guidelines in Section 422.2264 of this Part. This may require the development of written marketing materials used to promote an organization, provide enrollment information, and explain benefits, rules or various membership operational policies.

The burden associated with this is the time and effort put forth by the MA organization to submit the material to CMS for review. We estimate it would take one MA organization 720 minutes/12 hours to comply with this requirement. We estimate 670 MA organizations would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 8,040 hours.

Section 422.2262(b) requires the MA organization to certify that in the case of these certain marketing materials designated by CMS, it followed all applicable marketing guidelines when applicable or used model language specified by CMS without modification.

The burden associated with this requirement is the time and effort put forth by the MA organization to provide such certification. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(h)(1).

Section 422.2264 Guidelines for CMS Review and Notification

Section 422.2264 states that in reviewing marketing material or election forms under § 422.2262 of this Part, CMS determines that the marketing materials provide, in a format (and, where appropriate, print size), and using standard terminology that may be specified by CMS, the following information to Medicare beneficiaries interested in enrolling:

(a) Adequate written description of rules (including any limitations on the providers from whom services can be obtained), procedures, basic benefits and services, and fees and other charges.

(b) Adequate written description of any supplemental benefits and services.

(c) Adequate written explanation of the grievance and appeals process, including differences between the two, and when it is appropriate to use each.

(d) Any other information necessary to enable beneficiaries to make an informed decision about enrollment.

(e) Notify the general Public of its enrollment period in an appropriate manner, through appropriate media, throughout its service and if applicable, continuation areas.

(f) Includes in the written materials notice that the MA organization is authorized by law to refuse to renew its contract with CMS, that CMS also may

refuse to renew the contract, and that termination or non-renewal may result in termination of the beneficiary's enrollment in the plan.

(g) Are not materially inaccurate or misleading or otherwise make material misrepresentations.

(h) For markets with a significant non-English speaking population, provide materials in the language of these individuals.

The burden with these guidelines is the time and effort put forth by the MA organization to provide adequate written descriptions of rules, of any supplemental benefits and services, explanation of the grievance and appeals process, and any other information necessary to enable beneficiaries to make an informed decision about enrollment. It also requires the MA organization to notify the general public of its enrollment period in an appropriate manner and include in the written materials notice that the MA organization is authorized by law to refuse to renew its contract with CMS. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 422.2268 Standards for MA Organization Marketing

Section 422.2268(g) states MA organizations cannot market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment.

The burden associated with this requirement is the time and effort put forth by the MA organization to document a beneficiary's signed acknowledgement confirming the specific types of choices that the marketing representative is authorized to discuss. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 422.2272 Licensing of Marketing Representatives and Confirmation of Marketing Resources

Section 422.2272(b) states that an MA organization must establish and maintain a system for confirming that enrolled beneficiaries have, in fact, enrolled in the MA plan and understand the rules applicable under the plan.

The burden associated with this requirement is the time and effort put forth by the MA organization to establish and maintain such a system. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 422.2274 Broker and Agent Commissions and Training of Sales Agents

Section 422.2274(b) states that if a MA organization markets through independent brokers or agents, they must train and test agents selling Medicare products concerning Medicare rules and regulations specific to the plan products they intend to sell.

The burden associated with this requirement is the time and effort put forth by the MA organization to provide training and test agents. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 422.2274(d) states that upon CMS's request, the MA organization must provide CMS the information necessary for it to conduct oversight of marketing activities. This may require producing information for CMS on marketing materials submitted for review or file and use of training and testing modules.

The burden associated with this requirement is the time and effort put forth by the MA organization to produce the information requested by CMS. We estimate it would take one MA organization (480 minutes/8 hours) to comply with this requirement. We estimate 670 MA organizations would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 5,360 hours.

Section 422.2274(e) states that MA organizations must comply with State requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual's conduct.

The burden associated with this requirement is the time and effort put forth by the MA organization to comply with the State requests for information. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 423.34 Enrollment of Full-benefit Dual Eligible Individuals

Section 423.34(g)(2) states that the organization that receives the enrollment must provide notification that describes the costs and benefits of the new plan and the process for accessing care under the plan and their ability to decline the enrollment or choose another plan. Such notification must be provided to all potential enrollees prior to the enrollment effective date, in a form and manner determined by CMS.

The burden associated with this requirement is the time and effort put forth by the organization to provide such notification. We estimate it would take one organization 207 hours to comply with this requirement. We estimate 42 organizations would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 8700 hours.

Section 423.46 Late Enrollment Penalty

Section 423.46(b) states that Part D sponsors must obtain information on prior creditable coverage from all enrolled or enrolling beneficiaries and report this information to CMS in a form and manner determined by CMS.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to obtain the required information. To comply with this requirement, Part D sponsors would expend 15 minutes per new Part D enrollee. We estimate that there will be approximately 500,000 new Part D enrollees. Therefore the total annual burden associated with this requirement

will be 125,000 hours/7,500,000 minutes for all enrollees.

Section 423.46(d) requires the Part D plan sponsor to retain all information collected concerning a credible coverage period determination in accordance with the enrollment records retention requirements described in subpart K, § 423.505(e)(1)(iii).

The burden associated with this requirement is the time and effort put forth by the Part D plan sponsor to retain the required information. To comply with this requirement, Part D sponsors would expend 5 minutes per new Part D enrollee. There are approximately 500,000 enrollees. We estimate the total annual burden associated with this requirement will be 41,667 hours/2,500,000 minutes for all new Part D enrollees.

Section 423.505 Contract Provisions

Section 423.505(k)(5) states that the Chief Executive Officer, Chief Financial Officer, or an individual delegated the authority to sign on behalf of one of these officers, and who reports directly to the officer, must certify that the information provided is accurate, complete, and truthful and fully conforms to the requirements in §§ 423.336 and 423.343 and acknowledge that this information will be used for the purposes of obtaining Federal reimbursement. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(h)(1).

Section 423.580 Right to a Redetermination

Section 423.580 provides information on the ways for an enrollee to seek a redetermination. The burden associated with a reconsideration is exempt from the PRA as stipulated under 5 CFR 1320.4.

Section 423.2262 Review and Distribution of Marketing Materials

Section 423.2262(a)(1)(i) requires the Part D sponsor to submit the marketing material or form to CMS for review under the guidelines in § 423.2264. This may require the development of written marketing materials used to promote an organization, provide enrollment information, and explain benefits, rules or various membership operational policies.

The burden associated with these requirements is the time and effort put forth by the Part D sponsor to submit the marketing materials to CMS and to provide certification. We estimate it would take one Part D sponsor (720 minutes/12 hours) to comply with this requirement. We estimate 87 Part D sponsors would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 1044 hours.

Section 423.2264 Guidelines for CMS Review and Notification

Section 423.2264 reads that in reviewing marketing material or enrollment forms under § 423.2262, CMS determines (unless otherwise specified in additional guidance) that the marketing materials provide, in a format (and, where appropriate, print size), and using standard terminology that may be specified by CMS, the following information to Medicare beneficiaries interested in enrolling must consist of:

(a) Adequate written description of rules (including any limitations on the providers from whom services can be obtained), procedures, basic benefits and services, and fees and other charges.

(b) Adequate written explanation of the grievance and appeals process, including differences between the two, and when it is appropriate to use each.

(c) Any other information necessary to enable beneficiaries to make an informed decision about enrollment.

(d) Notify the general public of its enrollment period in an appropriate manner, through appropriate media, throughout its service area.

(e) Include in the written materials notice that the Part D plan is authorized by law to refuse to renew its contract with CMS, that CMS also may refuse to renew the contract, and that termination or non-renewal may result in termination of the beneficiary's enrollment in the Part D plan. In addition, the Part D plan may reduce its service area and no longer be offered in the area where a beneficiary resides.

(f) Are not materially inaccurate or misleading or otherwise make material misrepresentations.

(g) For markets with a significant non-English speaking population, provide materials in the language of these individuals.

The burden with these guidelines is the time and effort put forth by the Part D plan to provide adequate written descriptions of rules, of the grievance and appeals process, and any other information necessary to enable beneficiaries to make an informed decision about enrollment. It also requires the Part D plan to notify the general public of its enrollment period in an appropriate manner and include in the written materials notice that the Part D plan is authorized by law to refuse to renew its contract with CMS. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 423.2272 Licensing of Marketing Representatives and Confirmation of Marketing Resources

Section 423.2272(b) requires the Part D organization to establish and maintain a system for confirming that enrolled beneficiaries have in fact enrolled in the PDP and understand the rules applicable under the plan.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to establish and maintain such a system. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 423.2268 Standards for Part D Marketing

Section 423.2268(g) states Part D organizations cannot market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment.

The burden associated with this requirement is the time and effort put forth by the Part D organization to document a beneficiary's signed acknowledgement confirming the specific types of choices that the marketing representative is authorized to discuss. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 423.2274 Broker and Agent Commissions and Training of Sales Agents

Section 423.2274(b) requires the Part D sponsor to train and test agents selling Medicare products concerning Medicare rules and regulations specific to the plan products they intend to sell.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to provide training and test agents. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Section 423.2274(d) states that upon CMS's request, the Part D sponsor must provide CMS the information necessary for it to conduct oversight of marketing activities. This may require producing information for CMS on marketing materials submitted for review or file and use and training and testing modules.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to produce the information requested by CMS. We estimate it would take one Part D sponsor (480 minutes/8 hours) to comply with this requirement. We estimate 87 Part D sponsors would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 696 hours.

Section 423.2274(e) states that Part D organizations must comply with State requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual's conduct.

The burden associated with this requirement is the time and effort put forth by the Part D organization to comply with the State requests for information. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities.

Please note, CMS will revise the currently OMB approved PRA packages that contain Part 422—Medicare Advantage Program and Part 423—Voluntary Medicare Prescription Drug Benefit to include any new and/or revised burden requirements. The OMB approval numbers for those PRA packages are 0938–0753 and 0938–0964.

As reflected in the table that follows, the aggregate annual burden associated with the collection of information section for this proposed rule totals 985,527.5 hours.

OMB No.	Requirements	Number of respondents	Burden hours	Total annual burden (in hours)
	422.4(a)	176	54	9,504
0938–0753	422.52(g)	776	78	60,000
0938–0753	422.60(g)(2)	5	.5	2.5
0938–0753	422.101(f)(1)	335	24	8,040
0938–0753	422.103(e)	20	100	2,000
0938–0753	422.107(a)	460	18	8,280
0938–0753	422.504(g)(1)	3400	208	707,200
None/Exempt	422.2260	N/A	N/A	N/A
0938–0753	422.2262(a)(1)(i)	670	12	8,040
0938–0753	422.2262(b)	N/A	N/A	N/A
0938–0753	422.2264(a–e)	N/A	N/A	N/A
0938–0753	422.2268(g)	N/A	N/A	N/A
0938–0753	422.2272(b)	N/A	N/A	N/A
0938–0753	422.2274(b)(e)	N/A	N/A	N/A
0938–0753	422.2274(d)	670	8	5,360
0938–0964	423.34(g)(2)	42	207	8,694
0938–0964	423.46(b)	500,000	([1])15	125,000
0938–0964	423.46(d)	500,000	([1])5	41,667
None/Exempt	423.505(k)(5)	N/A	N/A	N/A
None/Exempt	423.580	N/A	N/A	N/A
0938–0964	423.2262(a)(1)(i)	87	12	1,044
0938–0964	423.2264(a–e)	N/A	N/A	N/A
0938–0964	423.2268(g)	N/A	N/A	N/A
0938–0964	423.2272(b)	N/A	N/A	N/A
0938–0964	423.2274(b)(e)	N/A	N/A	N/A
0938–0964	423.2274(d)	87	8	696
Total aggregate burden				985,527.5

[1] In minutes.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Mail copies to the address specified in the **ADDRESSES** section of this proposed rule and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn:* Carolyn Lovett, CMS Desk Officer, CMS–4131–P *carolyn_lovett@omb.eop.gov*. Fax (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all

comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that this proposed rule is ''economically significant'' as measured by the $100 million threshold, and hence a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis. The provisions in this proposed rule would require MA organizations and Part D sponsors to spend a total of approximately 985,527.5 additional hours on the functions addressed, reflecting a cost of $45,940,906. In addition, the provisions associated with our proposed revision to the beneficiary cost sharing and reinsurance subsidy payments are estimated to cost $30 million for FY 2010 and $530 million for FYs 2010 through 2018. The provisions impacting which drug costs are reported to CMS under the Retiree Drug Subsidy (RDS) program and used as the basis for calculating RDS payments to RDS plan sponsors would result in estimated savings of $30 million for FY 2010 and $510 million for FYs 2010 through 2018. We solicit public comment on the regulatory impact analysis of this proposed rule.

We use, as appropriate, the figures of $14.68 (based on the United States Department of Labor (DOL) statistics for the hourly wages of word processors and typists) and $37.15 (based on DOL statistics for a management analyst)[3] plus the added OMB figures of 12 percent for overhead and 36 percent for benefits, respectively, to represent average costs to plans, sponsors and downstream entities for the provisions discussed in this proposed rule with comment period. (Note that the wages cited for the provisions below include the hourly wage + an additional 48 percent to reflect overhead, benefit costs for total wages of $21.73 and $54.98, respectively). Using these figures the total net cost of our proposals would be approximately $45,940,906. This cost would be spread more or less evenly across participating plans, and hence would impose negligible burden on any plan in relation to existing administrative costs.

In the Regulatory Impact Analysis of the January 28, 2005 final rule (70 FR 4695) revising the Medicare Advantage program, we noted that costs associated with the MA program would be approximately $18.3 billion from 2004 through 2009, 10 percent of which we estimated would be administrative costs. The rule establishing the prescription drug benefit program published on January 28, 2005 (70 FR 4194) made a similar calculation in its Regulatory Impact Statement. Accordingly, the estimated cost of this proposed rule adds negligibly to the total administrative costs of the MA or Part D programs.

With respect to economic benefits, we have no reliable basis for estimating the effects of these proposals. Many of the proposed changes clarify or codify existing policies though such clarification could contribute to greater plan efficiency and compliance with program regulations. Accordingly, we estimate that while there could be economic benefits associated with these proposals, they are difficult to gauge at this time.

Because there are costs to plans and sponsors associated with several provisions of this proposed rule, however, we indicate general areas affected and specify the costs associated with these. For specific burden associated with the proposed requirements and the bases for our estimates, see section III, Collection of Information Requirements, of this rule. Note that we discuss separately, at the end of this section, provisions associated with our proposed revision to the Part D definitions (discussed in section II.B.3 of this proposed rule).

[3] The hourly rates for the burden requirement were developed using the Department of Labor, Bureau of Labor Statistics for May 2006 (National Occupational Employment and Wage Estimates).

Special Needs Plans

Several of our proposed provisions concern special needs plans and strengthening coordination between plans and States to better coordinate care, verify that individuals in dual eligible SNPs are eligible for Medicare, and to ensure that enrollees are not charged for costs that are the responsibility of the State. In addition, we are proposing that MA plans develop models of care that are specifically targeted to the special needs individuals served by their plans. We estimate the total cost of these provisions as $2,718,104. Costs for each provision are as follows:

- Verification of Medicaid eligibility or SNP status prior to beneficiary enrolling ($21.73 × 60,000 hours = $1,303,800).
- Developing models of care ($54.98 × 8,040 hours = $442,039).
- Documenting arrangements with States ($54.98 × 8,280 hours = $455,234).
- Monitoring enrollment to meet disproportionate share thresholds ($54.98 × 9,404 hours = $517,031).

Medicare Medical Savings Accounts (MSAs)

Costs associated with this proposed provision are for reporting cost and quality information about the plans to enrollees. We estimate the total cost of these provisions as $109,960 ($54.98 × 2,000 hours) for the first year a plan provides such information, and half that cost in subsequent years to maintain and update the information.

Enrollment

We are proposing requirements concerning Part D sponsor notification of full benefit dual eligible beneficiaries about enrollment options in addition to automatic enrollment, and would require that Part D sponsors obtain from Part D plan enrollees or those considering enrolling information concerning prior creditable coverage, and retain information collected concerning creditable coverage period determinations. We estimate the total cost of these provisions as $42,692,449. The costs for specific provisions are as follows:

- Notifying dual eligible beneficiaries of enrollment options in addition to automatic enrollment ($21.73 × 8,694 hours = $188,920).
- Obtaining prior creditable coverage information ($21.73 × 125,000 hours = $2,716,250).
- Retaining prior creditable coverage information ($21.73 × 41,667 hours = $905,423).

• Ensuring through provider contracts that dual eligible beneficiaries are not held liable for costs that are not their responsibility ($54.98 × 707,200 hours = $38,881,856).

Marketing

We are proposing several marketing provisions that would enhance our efforts to ensure that plans comply with all marketing requirements. The proposed provisions include requiring plans to submit marketing materials to CMS for review, and provide, for CMS oversight purpose, information to CMS concerning marketing activities. We estimate the total costs (MA and Part D programs) of these provisions as $530,353. Costs for each provision, in the context of each program, are as follows:

• Submission of marketing materials, MA program ($21.73 × 8,040 hours = $174,709).

• Training and testing of agents selling Medicare products, MA program ($54.98 × 5,360 hours = $294,692).

• Submission of marketing materials, Part D ($21.73 × 1,044 hours = $22,686).

• Training and testing of agents selling Medicare products, Part D ($54.98 × 696 hours = $38,266).

The RFA requires that we discuss any alternatives considered. Many of the proposed provisions would clarify or codify current policy which we discuss in section II, Provisions of the Proposed Regulations. As such, we considered whether or not the cost to codify these policies outweighed the need to do so. With one possible exception, we determined that the cost to plans and sponsors to clarify and codify our policies would be minimal and outweighed the minimal costs to implement these.

With respect to our proposed provisions concerning Medicare medical savings account plans, we considered the costs to plans of providing cost and quality information. As we discuss in more detail in section II, we believe that such information is readily available to most MSA plans and that, as a result, it would not be an undue burden on plans to provide such information. We would like more information on this subject, however, and have specifically asked for comments on this proposed provision.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. MA organizations and Part D sponsors, the only entities that would be affected by the proposed provisions, are not generally considered small business entities. They must follow minimum enrollment requirements (5,000 in urban areas and 1,500 in non-urban areas) and because of the revenue from such enrollments generally are above the revenue threshold required for analysis. While a very small rural plan could fall below the threshold, we do not believe that there are more than a handful of such plans.

A fraction of MA organizations and sponsors are considered small businesses because of their non-profit status. For an analysis to be necessary, however, 3–5 percent of their revenue would have to be affected by the proposed provisions. We do not believe that any of these provisions rise to that threshold. Many of the provisions we are proposing, for example, are clarifications of existing policy or require minimal costs. Because MA organizations and Part D sponsors are the only entities that would be affected by the proposed provisions and because of the minimal costs necessary to implement the proposed provisions, we are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

With respect to the proposed revision to the Part D definitions, we do not expect a significant impact on small businesses, such as small pharmacies, as a result of changes to the definitions under Part D of negotiated prices, gross covered drug costs, and allowable risk corridor costs in this proposed rule. These changes would primarily impact which drug costs are reported to us and how plans calculate beneficiary cost sharing. Moreover, we assume they would require minimal, if any, changes in health plan, PBM and pharmacy operational systems. We solicit comments on this assumption. Even with the changes to the way in which beneficiary cost sharing is calculated resulting from these definition changes, health plans will still be required to ensure that pharmacies receive their contracted rate. We believe that health plans would account for any additional costs associated with the change in the way beneficiary costs are calculated in their Part D bids. As a result, we expect that these changes would increase Part D bids and Federal Government payments such that the total impact for FY 2010 through 2018 is $530 million. However, we do not expect these changes to significantly increase health plan costs. Table 1 presents the costs associated with the change in the beneficiary costs for FYs 2010–2018.

TABLE 1.—INCREASE IN SUBSIDY PAYMENTS FOR FY 2010–2018

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FYs 2010–18
Increase in Subsidy Payments (millions)	$30	$40	$50	$50	$60	$60	$70	$80	$90	$530

With respect to the proposed changes impacting which drug costs are reported to CMS and how Part D plans calculate beneficiary cost-sharing, we believe that the impact on pharmacies would be minimal, as the total compensation received by pharmacies should remain unaffected. However, Part D plans would need to include administrative costs paid to PBMs, which were previously included as drug costs, as administrative cost in their bids. They would also need to factor reductions in beneficiary cost sharing and reinsurance subsidy payments into their bids. The reductions in beneficiary cost sharing are expected to outweigh the estimated increase in costs to the Federal Government. The changes in beneficiary cost sharing and reinsurance subsidy payments are expected to increase Part D bids due to increased plan liability and therefore, would increase the direct subsidy payments made by the Federal Government to health plans. The proposed changes regarding which the reporting of drug costs are also expected to reduce the reinsurance payments and low-income cost sharing subsidy payments made by the Federal Government. We estimate the net cost of these changes to be $30 million for FY 2010 and $530 million for FYs 2010

through 2018. These estimated costs reflect an increase in the direct subsidy payments made by the Federal Government and are net reductions in Federal reinsurance payments and low-income cost sharing subsidy payments. These estimated costs are based on the assumption that overall program costs would remain the same. They do not include any potential reductions in plan administrative costs due to the ability of plan sponsors to negotiate lower administrative fees with PBMs as a result of increased transparency in drug prices.

In addition, we expect that the proposed clarifications may require a small number of Part D sponsors to renegotiate their contracts with their PBMs to account for system changes to reflect the appropriate beneficiary cost sharing. We believe that most PBMs would be unaffected by the changes in the reporting drug costs reported and the calculation of beneficiary cost sharing. Thus, we expect that the financial impact of the proposed rule on PBMs would be minimal.

With respect to the proposed changes impacting which drug costs are reported to CMS under the Retiree Drug Subsidy (RDS) program and used as the basis for calculating RDS payments to RDS plan sponsors, this will result in savings to the RDS program since gross costs and allowable retiree costs may, until this proposed regulation becomes effective, include amounts paid by the plan to a PBM for Part D drugs that differ from the amounts paid by the PBM to pharmacies for these drugs (typically called a ''risk premium'' or ''PBM spread''). The proposed revised definitions of administrative costs, gross retiree costs and allowable retiree costs would exclude these risk premium payments from the calculation of RDS payments.

The estimated impact of applying the proposed changes is a savings of $510 million for fiscal years 2010 through 2018, as detailed in Table 2. To calculate these savings estimates, we multiplied our assumption for the number of affected beneficiaries in RDS by an estimated per capita drug cost impact and the statutorily-required 28 percent RDS subsidy percentage. Our estimate for the number of affected beneficiaries in RDS is based on the number of RDS beneficiaries assumed to be enrolled in affected RDS plans. In addition, this estimate assumes that only those RDS beneficiaries with drug spending between the cost threshold and the cost limit would be impacted by the proposed change. The proposed change would not affect Plan Sponsors with regard to those individuals below the threshold. With regard to those above the cost limit, a Plan Sponsor generally is eligible for a set amount of subsidy based on the amount of drug costs between the threshold and the limit, regardless of how much above the limit the individual's drug costs are, and regardless of whether pass through or lock in is used. Therefore, the proposed change generally would not affect Plan Sponsors with regard to individuals above the cost limit. We estimated the drug cost impact of switching from lock-in pricing to pass through pricing based on current estimates for 2006 Part D plans. We used the estimated impact for Part D plans because RDS specific information is not currently available to develop this estimate. We welcome comments on the assumptions used to develop the savings estimates from applying the revised definitions to the RDS program. In addition, we expect that the proposed rule's clarifications may result in some plan sponsors incurring nominal additional administrative costs in revising cost reporting methods.

TABLE 2.—DECREASE IN RDS PAYMENTS FOR FY 2010–2018

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FYs 2010–2018
Decrease in RDS Payments by the Federal Government (in millions)	$30	$40	$50	$50	$60	$60	$70	$70	$80	$510

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of 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 1 year by State, local or tribal governments, in the aggregate, or by the private sector of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $130 million. This rule would have no consequential effect on State, local, or tribal governments or on the private sector.

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 rule would not have a substantial direct effect on State or local governments, preempt States, or otherwise have a Federalism implication.

Alternatives Considered

As discussed earlier, many of the proposed provisions would clarify or codify current policy which we discuss in section II, Provisions of the Proposed Regulations. As such, we considered whether or not the cost to codify these policies outweighed the need to do so. With one possible exception, we determined that the cost to plans and sponsors to clarify and codify our policies would be minimal and outweighed the minimal costs to implement these provisions.

With respect to our proposed provisions concerning Medicare medical savings account plans, we considered the costs to plans of providing cost and quality information. As we discuss in more detail in section II, we believe that the information is readily available to most MSA plans and that, as a result, it would not be an undue burden on plans to provide the information. We would like more information on this subject, however, and have specifically asked for comments on this proposed provision.

With respect to the proposed changes to the drug cost-related definitions in the Part D and Retiree Drug Subsidy (RDS) programs, we have discussed the two alternatives at length in the preamble section. The two alternatives are (1) the current approach of allowing both pass-through and lock-in prices, and (2) the proposed approach of permitting only pass-through prices as the basis for Part D and RDS costs. As we discuss in section II.B, we believe there may be significant negative impacts on beneficiaries, market competition, pharmacies, and government expenditures associated with maintaining the current dual pricing approach and, therefore, we propose to allow only the single ''pass-through'' pricing approach as originally intended in the final rule establishing the Part D prescription drug benefit.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/index.html*), in Table D1 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the increase in costs as a result of the proposed changes. The costs are classified as either transfers by the Federal Government to Part D plans, or transfers from RDS sponsors to the Federal Government.

TABLE 3.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers ($ millions)
Increase in Federal Payments, FYs 2010–2018	
Annualized Monetized Transfers Using 7% Discount Rate	$55.8.
Annualized Monetized Transfers Using 3% Discount Rate	$57.5.
From Whom to Whom	Federal Government to Part D Plans.
Decrease in RDS Payments for FY 2010–2018	
Annualized Monetized Transfers Using 7% Discount Rate	$54.1.
Annualized Monetized Transfers Using 3% Discount Rate	$55.5.
From Whom to Whom	RDS Sponsors to Federal Government.
Cost for all Other Provisions Not Related to the Part D Definitions for FY 2010	
Undiscounted Annualized Monetized Transfers	$45.94.
Who Is Affected	MAOs/Part D Sponsors.

Conclusion

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

List of Subjects

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 422—MEDICARE ADVANTAGE PROGRAM

1. The authority citation for part 422 continues to read as follows:

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

Subpart A—General Provisions

2. Amend § 422.4 by revising paragraph (a)(1)(iv)(B) to read as follows:

§ 422.4 Types of MA plans.

(a) * * *

(1) * * *

(iv) * * *

(B) Enrolls plan membership that consists of 90 percent or more special needs individuals as defined in § 422.2.

(*1*) For purposes of meeting the 90 percent threshold, the plan may not disenroll a member who does not meet the special needs individual definition in § 422.2 of this part.

(*2*) Those enrollees deemed continuously eligible per § 422.52(d) of this part, are considered special needs individuals for the purpose of determining the 90 percent threshold.

* * * * *

Subpart B—Eligibility, Election, and Enrollment

3. Amend § 422.52 by adding paragraph (g) to read as follows:

§ 422.52 Eligibility to elect an MA plan for special needs individuals.

* * * * *

(g) *Establishing eligibility prior to enrollment.* A SNP must employ a process approved by CMS to verify the Medicaid eligibility or special needs status of an individual prior to enrolling the individual.

4. Amend § 422.60 by adding paragraph (g) to read as follows:

§ 422.60 Election process.

* * * * *

(g) *Passive enrollment by CMS.* In situations involving either immediate terminations as provided in § 422.510(a)(5) or other situations in which CMS determines that remaining enrolled in a plan poses potential harm to the members, CMS may implement passive enrollment procedures.

(1) *Passive enrollment procedures.* Individuals will be considered to have elected the plan selected by CMS unless they:

(i) Decline the plan selected by CMS, in a form and manner determined by CMS, or

(ii) Request enrollment in another plan.

(2) *Beneficiary notification.* The organization that receives the enrollment must provide notification that describes the costs and benefits of the plan and the process for accessing care under the plan and clearly explains their ability to decline the enrollment or choose another plan. Such notification must be provided to all potential

enrollees prior to the enrollment effective date (or as soon as possible after the effective date if prior notice is not practical), in a form and manner determined by CMS.

(3) *Special election period.* All individuals will be provided with a special election period, as described in § 422.62(b)(4).

5. Amend § 422.74 by revising paragraph (d)(1) introductory text and adding paragraph (d)(1)(iv) to read as follows:

§ 422.74 Disenrollment by the MA organization.

* * * * *

(d) * * *

(1) Except as specified in paragraph (d)(1)(iv) of this section, an MA organization may disenroll an individual from the MA plan for failure to pay basic and supplementary premiums under the following circumstances:

* * * * *

(iv) An MA organization may not disenroll an individual who has requested to have monthly premiums withheld per § 422.262(f)(1) or who is in premium withhold status.

* * * * *

6. Remove § 422.80.

Subpart C—Benefits and Beneficiary Protections

7. Amend § 422.101 by adding paragraph (f) to read as follows:

§ 422.101 Requirements relating to basic benefits.

* * * * *

(f) *Special needs plan model of care* (1) MA organizations offering special needs plans must have a model of care plan specifying how the plan will coordinate and deliver care designed for the plan's enrollees. The model of care plan must provide for the following:

(i) Coordinate care for eligible beneficiaries.

(ii) Include a network of providers/services having relevant clinical expertise.

(iii) Target a special needs population.

(iv) Deliver care based on appropriate protocol for the target enrollees.

(v) Deliver care to frail/disabled enrollees.

(vi) Deliver care to enrollees who are at the end of life.

(vii) Apply performance measures to evaluate processes and outcomes of the model.

(2) [Reserved]

8. Amend § 422.103 by adding new paragraph (e) to read as follows:

§ 422.103 Benefits under an MA MSA plan.

* * * * *

(e) All MA organizations offering MSA plans must provide enrollees with available information on the cost and quality of services in their service area, and submit to CMS for approval a proposed approach to providing such information.

9. Add new § 422.107 to read as follows:

§ 422.107 Special needs plans and dual eligibles: arrangements with States.

(a) *General rule.* An MA organization seeking to offer or currently offering a special needs plan primarily serving beneficiaries eligible for both Medicare and Medicaid (dual eligible SNPs) must have a documented relationship with the State Medicaid agency for the State in which the SNP is operating. At a minimum, documented arrangements must include the means to—

(1) Verify enrollees' eligibility for both Medicare and Medicaid,

(2) Identify and share information on Medicaid provider participation, and

(3) Identify Medicaid benefits which are not covered by Medicare.

(b) *Date of Compliance.* Current SNPs must be in compliance with § 422.107(a) within 3 years after the effective date of the final rule.

10. Amend § 422.111 by revising paragraph (a)(3) to read as follows:

§ 422.111 Disclosure requirements.

(a) * * *

(3) At the time of enrollment and at least annually thereafter, 15 days before the annual coordinated election period.

* * * * *

Subpart F—Submission of Bids, Premiums, and Related Information and Plan Approval

11. Amend § 422.262 by—

A. Adding paragraph (g).

B. Adding paragraph (h).

The additions read as follows:

§ 422.262 Beneficiary premiums.

* * * * *

(g) *Prohibition on improper billing of premiums.* MA organizations shall not bill an enrollee for a premium payment period if the enrollee has requested that premiums be withheld from his or her Social Security benefit.

(h) *Retroactive collection of premiums.* In circumstances where retroactive collection of premium amounts is necessary and the enrollee is without fault in creating the premium arrearage, the Medicare Advantage organization shall offer the enrollee the option of payment either by lump sum or by equal monthly installment spread out over at least the same period for which the premiums were due. That is, if 7 months of premiums are due, the member would have at least 7 months to repay.

Subpart K—Application Procedures and Contracts for Medicare Advantage Organizations

12. Subpart K heading is revised to read as set forth above.

13. Amend § 422.504 by revising paragraph (g)(1) to read as follows:

§ 422.504 Contract provisions.

* * * * *

(g) * * *

(1) Each MA organization must adopt and maintain arrangements satisfactory to CMS to protect its enrollees from incurring liability (for example, as a result of an organization's insolvency or other financial difficulties) for payment of any fees that are the legal obligation of the MA organization. To meet this requirement, the MA organization must—

(i) Ensure that all contractual or other written arrangements with providers prohibit the organization's providers from holding any enrollee liable for payment of any such fees;

(ii) Indemnify the enrollee for payment of any fees that are the legal obligation of the MA organization for services furnished by providers that do not contract, or that have not otherwise entered into an agreement with the MA organization, to provide services to the organization's enrollees; and

(iii) For all MA organizations with enrollees eligible for both Medicare and Medicaid, specify in contracts with providers that such enrollees will not be held liable for Medicare Part A and B cost sharing when the State is responsible for paying such amounts, and inform providers of Medicare and Medicaid benefits, and rules for enrollees eligible for Medicare and Medicaid. The contracts must state that providers will—

(A) Accept the MA plan payment as payment in full, or

(B) Bill the appropriate State source.

* * * * *

14. Amend § 422.506 by—

A. Revising paragraph (a)(2)(ii) and (a)(2)(iii).

B. Revising paragraph (b)(2)(ii) and (b)(2)(iii).

The revisions read as follows:

§ 422.506 Non-renewal of contract.

(a) * * *

(2) * * *

(ii) Each Medicare enrollee by mail at least 60 days before the date on which the non-renewal is effective. This notice must include a written description of

alternatives available for obtaining Medicare services within the service area, including alternative MA plans, Medigap options, and original Medicare and must receive CMS approval prior to issuance; and,

(iii) The general public, at least 60 days before the date on which the non-renewal is effective, by publishing a notice in one or more newspapers of general circulation in each community or county located in the MA organization's service area.

* * * * *

(b) * * *

(2) * * *

(ii) To each of the MA organization's Medicare enrollees by mail at least 60 days before the date on which the non-renewal is effective; and,

(iii) To the general public, at least 60 days before the date on which the non-renewal is effective, by publishing a notice in one or more newspapers of general circulation in each community or county located in the MA organization's service area.

* * * * *

Subpart M—Grievances, Organization Determinations and Appeals

15. Revise § 422.578 to read as follows:

§ 422.578 Right to a reconsideration.

Any party to an organization determination (including one that has been reopened and revised as described in § 422.616) may request that the determination be reconsidered under the procedures described in § 422.582, which address requests for a standard reconsideration. A physician who is providing treatment to an enrollee may, upon providing notice to the enrollee, request a standard reconsideration of a pre-service request for reconsideration on the enrollee's behalf as described in § 422.582. An enrollee or physician (acting on behalf of an enrollee) may request an expedited reconsideration as described in § 422.584.

16. Revise § 422.582 to read as follows:

§ 422.582 Request for a standard reconsideration.

(a) *Method and place for filing a request.* A party to an organization determination or, upon providing notice to the enrollee, a physician who is treating an enrollee and acting on the enrollee's behalf, must ask for a reconsideration of the determination by making a written request to the MA organization that made the organization determination. The MA organization may adopt a policy for accepting oral requests.

(b) *Timeframe for filing a request.* Except as provided in paragraph (c) of this section, a request for reconsideration must be filed within 60 calendar days from the date of the notice of the organization determination.

(c) *Extending the time for filing a request*—(1) *General rule.* If a party or physician acting on behalf of an enrollee shows good cause, the MA organization may extend the timeframe for filing a request for reconsideration.

(2) *How to request an extension of timeframe.* If the 60-day period in which to file a request for reconsideration has expired, a party to the organization determination or a physician acting on behalf of an enrollee may file a request for reconsideration with the MA organization. The request for reconsideration and to extend the timeframe must—

(i) Be in writing; and

(ii) State why the request for reconsideration was not filed on time.

(d) *Parties to the reconsideration.* The parties to the reconsideration are the parties to the organization determination, as described in § 422.574, and any other provider or entity (other than the MA organization) whose rights with respect to the organization determination may be affected by the reconsideration, as determined by the entity that conducts the reconsideration.

(e) *Withdrawing a request.* The party or physician acting on behalf of an enrollee who files a request for reconsideration may withdraw it by filing a written request for withdrawal at one of the places listed in paragraph (a) of this section.

Subpart O—Intermediate Sanctions

17. Amend § 422.760 by—

A. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), respectively.

B. Adding new paragraph (b)(2) to read as follows:

§ 422.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

* * * * *

(b) * * *

(2) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more MA enrollees, CMS may calculate a CMP of up to $25,000 for each MA enrollee directly adversely affected (or with the substantial likelihood of being adversely affected) by a deficiency.

* * * * *

Subpart U—[Added and Reserved]

18. Subpart U is added and reserved.

19. New subpart V is added to read as follows:

Subpart V—Medicare Advantage Marketing Requirements

Sec.
422.2260 Definitions concerning marketing materials.
422.2262 Review and distribution of marketing materials.
422.2264 Guidelines for CMS review.
422.2266 Deemed approval.
422.2268 Standards for MA organization marketing.
422.2272 Licensing of marketing representatives and confirmation of marketing resources.
422.2274 Broker and agent commissions.
422.2276 Employer group retiree marketing.

Subpart V—Medicare Advantage Marketing Requirements

§ 422.2260 Definitions concerning marketing materials.

As used in this subpart—

Marketing materials. (1) Marketing materials include any informational materials targeted to Medicare beneficiaries which:

(i) Promote the MA organization, or any MA plan offered by the MA organization.

(ii) Inform Medicare beneficiaries that they may enroll, or remain enrolled in, an MA plan offered by the MA organization.

(iii) Explain the benefits of enrollment in an MA plan, or rules that apply to enrollees.

(iv) Explain how Medicare services are covered under an MA plan, including conditions that apply to such coverage.

(2) Examples of marketing materials include, but are not limited to, the following:

(i) General audience materials such as general circulation brochures, newspapers, magazines, television, radio, billboards, yellow pages, or the Internet.

(ii) Marketing representative materials such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(iv) Promotional materials such as brochures or leaflets, including materials for circulation by third parties (for example, physicians or other providers).

(v) Membership communication materials such as membership rules, subscriber agreements, member handbooks and wallet card instructions to enrollees.

(vi) Letters to members about contractual changes; changes in

providers, premiums, benefits, plan procedures etc.

(vii) Membership or claims processing activities (for example, materials on rules involving non-payment of premiums, confirmation of enrollment or disenrollment, or annual notification information).

§ 422.2262 Review and distribution of marketing materials.

(a) *CMS review of marketing materials*. (1) Except as provided in paragraph (b) of this section an MA organization may not distribute any marketing materials (as defined in § 422.2260 of this part), or election forms, or make such materials or forms available to individuals eligible to elect an MA organization unless—

(i) At least 45 days (or 10 days if using marketing materials that use, without modification, proposed model language as specified by CMS) before the date of distribution the MA organization has submitted the material or form to CMS for review under the guidelines in § 422.2264 of this Part; and

(ii) CMS does not disapprove the distribution of new material or form.

(2) [Reserved]

(b) *File and use*. The MA organization may distribute certain types of marketing materials, designated by CMS, 5 days following their submission to CMS if the MA organization certifies that in the case of these designated marketing materials it followed all applicable marketing guidelines and, when applicable, used model language specified by CMS without modification.

§ 422.2264 Guidelines for CMS review.

In reviewing marketing material or election forms under § 422.2262 of this part, CMS determines that the marketing materials—

(a) Provide, in a format (and, where appropriate, print size), and using standard terminology that may be specified by CMS, the following information to Medicare beneficiaries interested in enrolling:

(1) Adequate written description of rules (including any limitations on the providers from whom services can be obtained), procedures, basic benefits and services, and fees and other charges.

(2) Adequate written description of any supplemental benefits and services.

(3) Adequate written explanation of the grievance and appeals process, including differences between the two, and when it is appropriate to use each and

(4) Any other information necessary to enable beneficiaries to make an informed decision about enrollment.

(b) Notify the general public of its enrollment period in an appropriate manner, through appropriate media, throughout its service and if applicable, continuation areas.

(c) Include in written materials notice that the MA organization is authorized by law to refuse to renew its contract with CMS, that CMS also may refuse to renew the contract, and that termination or non-renewal may result in termination of the beneficiary's enrollment in the plan.

(d) Ensure that materials are not materially inaccurate or misleading or otherwise make material misrepresentations.

(e) For markets with a significant non-English speaking population, provide materials in the language of these individuals.

§ 422.2266 Deemed approval.

If CMS has not disapproved the distribution of marketing materials or forms submitted by an MA organization with respect to an MA plan in an area, CMS is deemed not to have disapproved the distribution in all other areas covered by the MA plan and organization except with regard to any portion of the material or form that is specific to the particular area.

§ 422.2268 Standards for MA organization marketing.

In conducting marketing activities, MA organizations may not—

(a) Provide for cash or other monetary rebates as an inducement for enrollment or otherwise. This does not prohibit explanation of any legitimate benefits the beneficiary might obtain as an enrollee of the MA plan, such as eligibility to enroll in a supplemental benefit plan that covers deductibles and coinsurance, or preventive services.

(b) Offer gifts to potential enrollees, unless the gifts are of nominal (as defined in the CMS Marketing Guidelines) value, are offered to all eligible members without discrimination, and are not in the form of cash or other monetary rebates. Providing meals for potential enrollees is prohibited, regardless of value.

(c) Engage in any discriminatory activity such as, for example, attempts to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.

(d) Solicit door-to-door for Medicare beneficiaries or through other unsolicited means of direct contact, including calling a beneficiary without the beneficiary initiating the contact.

(e) Engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the MA organization. The MA organization may not claim that it is recommended or endorsed by CMS or Medicare or that CMS or Medicare recommends that the beneficiary enroll in the MA plan. It may, however, explain that the organization is approved for participation in Medicare.

(f) Market non-health care related products to prospective enrollees during any MA or Part D sales activity or presentation. This is considered cross-selling and is prohibited.

(g) Market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment.

(h) Market additional health related lines of plan business not identified prior to an in-home appointment without a separate appointment that may not be scheduled until 48 hours after the initial appointment.

(i) Distribute marketing materials for which, before expiration of the 45-day period, the MA organization receives from CMS written notice of disapproval because it is inaccurate or misleading, or misrepresents the MA organization, its marketing representatives, or CMS.

(j) Use providers or provider groups to distribute printed information comparing the benefits of different health plans unless the materials have the concurrence of all MA organizations involved.

(k) Conduct sales presentations or distribute and accept plan applications in provider offices or other places where health care is delivered.

(l) Conduct sales presentations or distribute and accept plan applications at educational events.

(m) Employ MA plan names that suggest that a plan is not available to all Medicare beneficiaries. This prohibition shall not apply to MA plan names in effect on July 31, 2000.

(n) Display the names and/or logos of co-branded network providers on the organization's member identification card. Other marketing materials that include names and/or logos of provider co-branding partners must clearly indicate that other providers are available in the network.

(o) Engage in any other marketing activity prohibited by CMS in its marketing guidance.

§ 422.2272 Licensing of marketing representatives and confirmation of marketing resources.

In its marketing the MA organization must—

(a) Demonstrate to CMS' satisfaction that marketing resources are allocated to marketing to disabled Medicare

population as well as beneficiaries age 65 and over.

(b) Establish and maintain a system for confirming that enrolled beneficiaries have, in fact, enrolled in the MA plan and understand the rules applicable under the plan.

(c) Employ as marketing representatives only individuals who are licensed by the State to conduct marketing activities (as defined in the Medicare Marketing Guidelines) in that State, and whom the organization has informed that State it has appointed, consistent with the appointment process provided for under State law, except that any fees required under such appointment process do not apply.

§ 422.2274 Broker and agent commissions.

If a Medicare Advantage organization markets through independent brokers or agents—

(a)(1) In paying a commission or other compensation (collectively referred to as ''commission'') to such agent or representative, the commission the agent would receive for selling or servicing the policy in the first year could not exceed the commission the agent receives for selling or servicing the policy in all subsequent years.

(2) The commission must be the same for all plans and plan product types offered by the MA plan's parent organization.

(b) It must ensure agents selling Medicare products are trained on Medicare rules and regulations specific to the plan products they intend to sell.

(c) It must ensure agents selling Medicare products are tested, as specified in CMS guidance.

(d) Upon CMS's request, the organization must provide to CMS the information necessary for it to conduct oversight of marketing activities.

(e) It must comply with State requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual's conduct. CMS will establish and maintain a memorandum of understanding (MOU) to share compliance and oversight information with States that agree to the MOU.

§ 422.2276 Employer group retiree marketing.

MA organizations may develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the MA organization, and furnish these materials only to the group members. These materials are not subject to CMS prior review and approval.

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

20. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart B—Eligibility and Enrollment

21. Amend § 423.32 by adding paragraph (g) to read as follows:

§ 423.32 Enrollment process.

* * * * *

(g) *Passive enrollment by CMS.* In situations involving either immediate terminations as provided in § 423.509(a)(5) or § 422.510(a)(5), or other situations in which CMS determines that remaining enrolled in a plan poses potential harm to plan members, CMS may implement passive enrollment procedures.

(1) *Passive enrollment procedures.* Individuals will be considered to have enrolled in the plan selected by CMS unless individuals—

(i) Decline the plan selected by CMS, in a form and manner determined by CMS, or

(ii) Request enrollment in another plan.

(2) *Beneficiary notification.* The organization that receives the enrollment must provide notification that describes the costs and benefits of the new plan and the process for accessing care under the plan and the beneficiary's ability to decline the enrollment or choose another plan. Such notification must be provided to all potential enrollees prior to the enrollment effective date (or as soon as possible after the effective date if prior notice is not practical), in a form and manner determined by CMS.

(3) *Special election period.* All individuals will be provided with a special enrollment period, as described in § 423.38(c)(8)(ii).

22. Amend § 423.34 by—

A. Revising paragraph (d)(1).

B. Adding paragraph (d)(3).

The revision and addition reads as follows:

§ 423.34 Enrollment of full-benefit dual eligible individuals.

* * * * *

(d) *Automatic enrollment rules—(1) General rule.* Except for full-benefit dual eligible individuals who are qualifying covered retirees as specified in paragraph (d)(3) of this section, CMS automatically enrolls full-benefit dual eligible individuals who fail to enroll in a Part D plan into a PDP offering basic prescription drug coverage in the area where the individual resides that has a monthly beneficiary premium amount (as defined in § 423.780(b)). In the event that there is more than one PDP in an area with a monthly beneficiary premium at or below the low-income premium subsidy amount, individuals are enrolled in such PDPs on a random basis.

* * * * *

(3) *Exception for full-benefit dual eligible individuals who are qualifying covered retirees.* Full-benefit dual eligible individuals who are qualifying covered retirees as defined in § 423.882 also are automatically enrolled in a part D plan, consistent with this paragraph, unless they elect to decline that enrollment. Before effectuating such an enrollment, however, CMS will provide notice to such individuals of their choices and advise them to discuss the potential impact of Medicare Part D coverage on their group health plan coverage. This notice informs such individuals that they will be deemed to have declined to enroll in Part D unless they affirmatively enroll in a Part D plan or contact CMS and confirm that they wish to be auto-enrolled in a PDP. Individuals who elect not to be auto-enrolled, may enroll in Medicare Part D at a later time if they choose to do so.

* * * * *

23. Amend § 423.44 by revising paragraph (d)(1) introductory text and adding paragraph (d)(1)(iv) as follows:

§ 423.44 Involuntary disenrollment by the PDP.

* * * * *

(d) * * *

(1) Except as specified in paragraph (d)(1)(iv) of this section, a PDP sponsor may disenroll an individual from the PDP for failure to pay any monthly premium under the following circumstances:

* * * * *

(iv) A PDP sponsor may not disenroll an individual who has requested to have monthly premiums withheld per § 423.293(a) or who is in premium withhold status, as defined by CMS.

* * * * *

24. Amend § 423.46 by adding paragraph (b) through (d) to read as follows:

§ 423.46 Late enrollment penalty.

* * * * *

(b) *Role of Part D plan in determination of the penalty.* Part D sponsors must obtain information on prior creditable coverage from all enrolled or enrolling beneficiaries and report this information to CMS in a form and manner determined by CMS.

(c) *Reconsideration*. Individuals determined to be subject to a late enrollment penalty may request reconsideration of this determination, consistent with § 423.56(g). Such review will be conducted by CMS, or an independent review entity contracted by CMS, in accordance with guidance issued by CMS. Decisions made through this review are not subject to appeal, but may be reviewed and revised at the discretion of CMS.

(d) *Record retention*. Part D plan sponsors must retain all information collected concerning a creditable coverage period determination in accordance with the enrollment records retention requirements described in subpart K, § 423.505(e)(1)(iii).

§ 423.50 [Removed]

25. Remove § 423.50.

Subpart C—Benefits and Beneficiary Protections

26. Section 423.100 is amended by—

A. Revising the definition of ''incurred costs.''

B. Revising the definition of ''negotiated prices.''

The revision reads as follows:

§ 423.100 Definitions.

* * * * *

Incurred costs means costs incurred by a Part D enrollee for—

(1)(i) Covered Part D drugs that are not paid for under the Part D plan as a result of application of any annual deductible or other cost-sharing rules for covered Part D drugs prior to the Part D enrollee satisfying the out-of-pocket threshold under § 423.104(d)(5)(iii), including any price differential for which the Part D enrollee is responsible under § 423.124(b); or

(ii) Nominal cost-sharing paid by or on behalf of an enrollee, which is associated with drugs that would otherwise be covered Part D drugs, as defined in § 423.100, but are instead paid for, with the exception of said nominal cost-sharing, by a patient assistance program providing assistance outside the Part D benefit, provided that documentation of such nominal cost-sharing has been submitted to the Part D plan consistent with the plan processes and instructions for the submission of such information; and

(2) That are paid for—

(i) By the Part D enrollee or on behalf of the Part D enrollee by another person, and the Part D enrollee (or person paying on behalf of the Part D enrollee) is not reimbursed through insurance or otherwise, a group health plan, or other third party payment arrangement, or the person paying on behalf of the Part D enrollee is not paying under insurance or otherwise, a group health plan, or third party payment arrangement;

(ii) Under a State Pharmaceutical Assistance Program (as defined in § 423.454 of this part); or

(iii) Under § 423.782 of this part.

* * * * *

Negotiated prices means prices for covered Part D drugs that—

(1) The Part D sponsor (or other intermediary contracting organization) and the network dispensing pharmacy or other network dispensing provider have negotiated as the amount such network entity will receive, in total, for a particular drug;

(2) Are reduced by those discounts, direct or indirect subsidies, rebates, other price concessions, and direct or indirect remuneration that the Part D sponsor has elected to pass through to Part D enrollees at the point of sale; and

(3) Includes any dispensing fees.

* * * * *

27. Amend § 423.104 by revising paragraph (g)(1) to read as follows:

§ 423.104 Requirements related to qualified prescription drug coverage.

* * * * *

(g) * * *

(1) *Access to negotiated prices*. A Part D sponsor is required to provide its Part D enrollees with access to negotiated prices for covered Part D drugs included in its Part D plan's formulary. Negotiated prices must be provided even if no benefits are payable to the beneficiary for covered Part D drugs because of the application of any deductible or 100 percent coinsurance requirement following satisfaction of any initial coverage limit. Negotiated prices must be provided when the negotiated price for a covered Part D drug under a Part D sponsor's benefit package is less than the applicable cost-sharing before the application of any deductible, before any initial coverage limit, before the annual out-of-pocket threshold, and after the annual out-of-pocket threshold.

* * * * *

28. Amend § 423.128 as follows:

A. Revise paragraph (a)(3).

B. Revise paragraph (e)(6).

§ 423.128 Dissemination of Part D Plan information.

(a) * * *

(3) At the time of enrollment and at least annually thereafter, 15 days before the annual coordinated election period.

* * * * *

(e) * * *

(6) Be provided no later than the end of the month following any month when prescription drug benefits are provided under this part, including the covered Part D spending between the initial coverage limit described in § 423.104(d)(3) and the out-of-pocket threshold described in § 423.104(d)(5)(iii).

Subpart F—Submission of Bids and Monthly Beneficiary Premiums; Plan Approval

29. Amend § 423.293 by—

A. Revising paragraph (a).

B. Adding paragraph (e).

The revision and addition read as follows:

§ 423.293 Collection of monthly beneficiary premium.

(a) *General rule*. Part D sponsors must charge enrollees a consolidated monthly Part D premium equal to the sum of the Part D monthly premium for basic prescription drug coverage (if any) and the premium for supplemental coverage (if any and if the beneficiary has enrolled in such supplemental coverage). Part D sponsors must also permit each enrollee, at the enrollee's option, to make payment of premiums (if any) under this part to the sponsor using any of the methods listed in § 422.262(f) of this chapter. In circumstances where retroactive collection of premium is necessary and where the member is without fault in creating the premium arrearage, the Part D sponsor shall offer the member the option of payment either by lump sum or by equal monthly installment spread out over the same period for which the premiums were due, that is, if 7 months of premiums are due, the member would have at least 7 months to repay.

* * * * *

(e) *Prohibition on improper billing of premiums*. Part D plan sponsors shall not bill an enrollee for a premium payment period if the enrollee has requested that premiums be withheld from his or her Social Security benefit.

Subpart G—Payments to Part D Plan Sponsors for Qualified Prescription Drug Coverage

30. Section 423.308 is amended by—

A. Revising the definition of ''actually paid.''

B. Adding the definition of ''administrative costs.''

C. Revising the definition of ''allowable risk corridor costs.''

D. Revising the definition of ''gross covered prescription drug costs.''

E. Revising the definition of ''target amount.''

The addition and revisions read as follows:

§ 423.308 Definitions and terminology.

* * * * *

Actually paid means that the costs must be actually incurred by the Part D sponsor and must be net of any direct or indirect remuneration (including discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits offered to some or all purchasers) from any source (including manufacturers, pharmacies, enrollees, or any other person) that would serve to decrease the costs incurred under the Part D plan. Direct and indirect remuneration includes discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by an intermediary contracting organization with which the Part D plan sponsor has contracted for administrative services, regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the Part D plan sponsor and regardless of the terms of the contract between the plan sponsor and the intermediary contracting organization.

Administrative costs means costs incurred by a Part D sponsor in complying with the requirements of this Part for a coverage year and that are not drug costs incurred to purchase or reimburse the purchase of Part D drugs. Administrative costs include amounts paid by the Part D sponsor to an intermediary contracting organization for covered Part D drugs dispensed to enrollees in the sponsor's Part D plan that differ from the amount paid by the intermediary contracting organization to a pharmacy or other entity that is the final dispenser of the covered Part D drugs. For example, any profit or loss retained by an intermediary contracting organization (through discounts, rebates, or other direct or indirect price concessions) when negotiating prices with dispensing entities is considered an administrative cost.

* * * * *

Allowable risk corridor costs means—

(1) The subset of costs incurred under a Part D plan (not including administrative costs, but including dispensing fees) that are attributable to basic prescription drug coverage only and that are incurred and actually paid by the Part D sponsor to—

(i) A dispensing pharmacy or other dispensing provider (whether directly or through an intermediary contracting organization) under the Part D plan;

(ii) The parties listed in § 423.464(f)(1) with which the Part D sponsor must coordinate benefits, including other Part D plans, as the result of any reconciliation process developed by CMS under § 423.464 of this part; or

(iii) An enrollee (or third party paying on behalf of the enrollee) to indemnify the enrollee when the reimbursement is associated with obtaining drugs under the Part D plan; and

(2) These costs must be based upon imposition of the maximum amount of copayments permitted under § 423.782 of this part. The costs for any Part D plan offering enhanced alternative coverage must be adjusted not only to exclude any costs attributable to benefits beyond basic prescription drug coverage, but also to exclude any prescription drug coverage costs determined to be attributable to increased utilization over standard prescription drug coverage as the result of the insurance effect of enhanced alternative coverage in accordance with CMS guidelines on actuarial valuation.

* * * * *

Gross covered prescription drug costs mean those actually paid costs incurred under a Part D plan, excluding administrative costs, but including dispensing fees, during the coverage year. They equal the sum of the following—

(1) The share of negotiated prices (as defined by § 423.100 of this chapter) actually paid by the Part D plan that is received as reimbursement by the pharmacy or other dispensing entity, reimbursement paid to indemnify an enrollee when the reimbursement is associated with an enrollee obtaining covered Part D drugs under the Part D plan, or payments made by the Part D sponsor to other parties listed in § 423.464(f)(1) with which the Part D sponsor must coordinate benefits, including other Part D plans, or as the result of any reconciliation process developed by CMS under § 423.464 of this chapter.

(2) Nominal cost-sharing paid by or on behalf of an enrollee which is associated with drugs that would otherwise be covered Part D drugs, as defined in § 423.100, but are instead paid for, with the exception of said nominal cost-sharing, by a patient assistance program providing assistance outside the Part D benefit, provided that documentation of such nominal cost-sharing has been submitted to the Part D plan consistent with the plan processes and instructions for the submission of such information.

(3) All amounts paid under the Part D plan by or on behalf of an enrollee (such as the deductible, coinsurance, cost sharing, or amounts between the initial coverage limit and the out-of-pocket threshold) in order to obtain Part D drugs that are covered under the Part D plan. If an enrollee who is paying 100 percent cost sharing (as a result of paying a deductible or because the enrollee is between the initial coverage limit and the out-of-pocket threshold) obtains a covered Part D drug at a lower cost than is available under the Part D plan, such cost-sharing will be considered an amount paid under the plan by or on behalf of an enrollee under the previous sentence of this definition, if the enrollee's costs are incurred costs as defined under § 423.100 of this part and documentation of the incurred costs has been submitted to the Part D plan consistent with plan processes and instructions for the submission of such information. These costs are determined regardless of whether the coverage under the plan exceeds basic prescription drug coverage.

Target amount means the total amount of payments (from both CMS and by or on behalf of enrollees) to a Part D plan for the coverage year for all standardized bid amounts as risk adjusted under § 423.329(b)(1), less the administrative expenses (including return on investment) assumed in the standardized bids.

31. Amend § 423.329 by revising paragraph (d)(2)(i) to read as follows:

§ 423.329 Determination of payments.

* * * * *

(d) * * *

(2) * * *

(i) *Interim payments.* CMS establishes a payment method by which interim payments of amounts under this section are made during a year based on the low-income cost-sharing assumptions submitted with plan bids under § 423.265(d)(2)(iv) and negotiated and approved under § 423.272, or by an alternative method that CMS determines.

* * * * *

Subpart K—Application Procedures and Contracts With Part D Plan Sponsors

32. Amend § 423.505 by revising paragraph (k)(5) to read as follows:

§ 423.505 Contract provisions.

* * * * *

(k) * * *

(5) *Certification of allowable costs for risk corridor and reinsurance information.* The Chief Executive Officer, Chief Financial Officer, or an individual delegated the authority to sign on behalf of one of these officers, and who reports directly to the officer, must certify (based on best knowledge, information, and belief) that the information provided for purposes of supporting allowable costs as defined in § 423.308, including data submitted to CMS regarding direct or indirect remuneration (DIR) that serves to reduce the costs incurred by the Part D sponsor for Part D drugs, is accurate, complete, and truthful and fully conforms to the requirements in § 423.336 and § 423.343 and acknowledge that this information will be used for the purposes of obtaining Federal reimbursement.

* * * * *

33. Amend § 423.507 by—

A. Revising paragraphs (a)(2)(ii) and (a)(2)(iii).

B. Revising paragraphs (b)(2)(ii) and (b)(2)(iii).

The revisions read as follows:

§ 423.507 Non-renewal of contract.

(a) * * *

(2) * * *

(ii) Each Medicare enrollee by mail at least 60 days before the date on which the non-renewal is effective. This notice must include a written description of alternatives available for obtaining qualified prescription drug coverage within the PDP region, including MA–PD plans, and other PDPs, and must receive CMS approval prior to issuance; and,

(iii) The general public, at least 60 days before the date on which the non-renewal is effective, by publishing a notice in one or more newspapers of general circulation in each community or county located in the Part D plan sponsor's service area.

* * * * *

(b) * * *

(2) * * *

(ii) To each of the Part D plan sponsor's Medicare enrollees by mail at least 60 days before the date on which the non-renewal is effective; and,

(iii) To the general public, at least 60 days before the date on which the non-renewal is effective, by publishing a notice in one or more newspapers of general circulation in each community or county located in the Part D plan sponsor's service area.

* * * * *

Subpart L—Effect of Change of Ownership or Leasing of Facilities During Term of Contract

34. Amend § 423.551 by adding paragraph (g) to read as follows:

§ 423.551 General provisions.

* * * * *

(g) *Sale of beneficiaries not permitted:* CMS will not recognize as a sale or transfer of a PDP line of business (qualifying as a change of ownership) a transaction that consists solely of the sale or transfer of individual beneficiaries or groups of beneficiaries enrolled in a pharmacy benefit package offered by a PDP sponsor.

Subpart M—Grievances, Coverage Determinations, and Appeals

35. Amend § 423.560 by adding, in alphabetical order, the definition for ''Other prescriber'' as follows—

§ 423.560 Definitions.

* * * * *

Other prescriber means a health care professional other than a physician who is authorized under State law or other applicable law to write prescriptions.

* * * * *

36. Amend § 423.566 by revising paragraph (c)(3) to read as follows:

§ 423.566 Coverage determinations.

* * * * *

(c) * * *

(3) The prescribing physician or other prescriber, on behalf of the enrollee.

37. Amend § 423.568 by revising paragraph (a) to read as follows:

§ 423.568 Standard timeframe and notice requirements for coverage determinations.

(a) *Timeframe for requests for drug benefits.* When a party makes a request for a drug benefit, the Part D plan sponsor must notify the enrollee (and the prescribing physician or other prescriber involved, as appropriate) of its determination as expeditiously as the enrollee's health condition requires, but no later than 72 hours after receipt of the request, or, for an exceptions request, the physician's or other prescriber's supporting statement.

* * * * *

38. Amend § 423.570 by—

A. Revising paragraph (a).

B. Revising paragraph (b).

C. Revising paragraph (c)(1).

D. Revising paragraph (c)(3) introductory text.

E. Revising paragraph (c)(3)(ii).

F. Republishing paragraph (d) introductory text.

G. Revising paragraph (d)(1).

H. Revising paragraph (d)(2) introductory text.

I. Revising paragraph (d)(2)(iii).

The revisions read as follows:

§ 423.570 Expediting certain coverage determinations.

(a) *Request for expedited determination.* An enrollee or an enrollee's prescribing physician or other prescriber may request that a Part D plan sponsor expedite a coverage determination involving issues described in § 423.566(b). This does not include requests for payment of Part D drugs already furnished.

(b) *How to make a request.* (1) To ask for an expedited determination, an enrollee or an enrollee's prescribing physician or other prescriber on behalf of the enrollee must submit an oral or written request directly to the Part D plan sponsor or, if applicable, to the entity responsible for making the determination, as directed by the Part D plan sponsor.

(2) A prescribing physician or other prescriber may provide oral or written support for an enrollee's request for an expedited determination.

(c) * * *

(1) An efficient and convenient means for accepting oral or written requests submitted by enrollees, prescribing physicians, or other prescribers.

* * * * *

(3) A means for issuing prompt decisions on expediting a determination, based on the following requirements:

* * * * *

(ii) For a request made or supported by an enrollee's prescribing physician or other prescriber, provide an expedited determination if the physician or other prescriber indicates that applying the standard timeframe for making a determination may seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(d) *Actions following denial.* If a Part D plan sponsor denies a request for expedited determination, it must take the following actions:

(1) Make the determination within the 72-hour timeframe established in § 423.568(a) for a standard determination. The 72-hour period begins on the day the Part D plan sponsor receives the request for expedited determination, or, for an exceptions request, the physician's or other prescriber's supporting statement.

(2) Give the enrollee and prescribing physician or other prescriber prompt oral notice of the denial that—

* * * * *

(iii) Informs the enrollee of the right to resubmit a request for an expedited

determination with the prescribing physician's or other prescriber's support and

* * * * *

39. Amend § 423.572 by revising paragraph (a) to read as follows:

§ 423.572 Timeframes and notice requirements for expedited coverage determinations.

(a) *Timeframe for determination and notification.* Except as provided in paragraph (b) of this section, a Part D plan sponsor that approves a request for expedited determination must make its determination and notify the enrollee (and the prescribing physician or other prescriber involved, as appropriate) of its decision, whether adverse or favorable, as expeditiously as the enrollee's health condition requires, but no later than 24 hours after receiving the request, or, for an exceptions request, the physician's or other prescriber's supporting statement.

* * * * *

40. Amend § 423.578 by—

A. Revising paragraph (a) introductory text.

B. Revising paragraph (a)(2) introductory text.

C. Revising paragraph (a)(2)(i).

D. Revising paragraph (a)(3).

E. Revising paragraph (a)(4) introductory text.

F. Revising paragraph (a)(5).

G. Revising paragraph (b) introductory text.

H. Revising paragraph (b)(2) introductory text.

I. Revising paragraph (b)(2)(i), (b)(4), (b)(5) introductory text, and (b)(6).

J. Revising paragraph (c)(3)(i), (c)(4)(i) introductory text, and (c)(4)(i)(A).

K. Revising paragraph (f).

The revisions read as follows:

§ 423.578 Exceptions process.

(a) *Request for exceptions to a plan's tiered cost-sharing structure.* Each Part D plan sponsor that provides prescription drug benefits for Part D drugs and manages this benefit through the use of a tiered formulary must establish and maintain reasonable and complete exceptions procedures subject to CMS' approval for this type of coverage determination. The Part D plan sponsor grants an exception whenever it determines that the non-preferred drug for treatment of the enrollee's condition is medically necessary, consistent with the physician's or other prescriber's statement under paragraph (a)(4) of this section.

* * * * *

(2) The exceptions criteria of a Part D plan sponsor must include, but are not limited to—

(i) A description of the criteria a Part D plan sponsor uses to evaluate a determination made by the enrollee's prescribing physician or other prescriber under paragraph (a)(4) of this section.

* * * * *

(3) An enrollee or the enrollee's prescribing physician or other prescriber may file a request for an exception.

(4) A prescribing physician or other prescriber must provide an oral or written supporting statement that the preferred drug for the treatment of the enrollee's conditions—

* * * * *

(5) If the physician or other prescriber provides an oral supporting statement, the Part D plan sponsor may require the physician or other prescriber to subsequently provide a written supporting statement to demonstrate the medical necessity of the drug. The Part D plan sponsor may require the prescribing physician or other prescriber to provide additional supporting medical documentation as part of the written follow-up.

* * * * *

(b) *Request for exceptions involving a non-formulary Part D drug.* Each Part D plan sponsor that provides prescription drug benefits for Part D drugs and manages this benefit through the use of a formulary must establish and maintain exceptions procedures subject to CMS' approval for receipt of an off-formulary drug. The Part D plan sponsor must grant an exception whenever it determines that the drug is medically necessary, consistent with the physician's or other prescriber's statement under paragraph (b)(5) of this section, and that the drug would be covered but for the fact that it is an off-formulary drug. Formulary use includes the application of cost utilization tools, such as a dose restriction, including the dosage form, that causes a particular Part D drug not to be covered for the number of doses prescribed or a step therapy requirement that causes a particular Part D drug not to be covered until the requirements of the plan's coverage policy are met, or a therapeutic substitution requirement.

* * * * *

(2) The exception criteria of a Part D plan sponsor must include, but are not limited to—

(i) A description of the criteria a Part D plan sponsor uses to evaluate a prescribing physician's or other prescriber's determination made under paragraph (b)(5) of this section;

* * * * *

(4) An enrollee, the enrollee's appointed representative, or the prescribing physician or other prescriber (on behalf of the enrollee) may file a request for an exception.

(5) A prescribing physician or other prescriber must provide an oral or written supporting statement that the requested prescription drug is medically necessary to treat the enrollee's disease or medical condition because—

* * * * *

(6) If the physician or other prescriber provides an oral supporting statement, the Part D plan sponsor may require the physician or other prescriber to subsequently provide a written supporting statement. The Part D plan sponsor may require the prescribing physician or other prescriber to provide additional supporting medical documentation as part of the written follow-up.

(c) * * *

(3) * * *

(i) The enrollee's prescribing physician or other prescriber continues to prescribe the drug.

* * * * *

(4) * * *

(i) The Part D plan sponsor may not require the enrollee to request approval for a refill, or a new prescription to continue using the Part D prescription drug after the refills for the initial prescription are exhausted, as long as—

(A) The enrollee's prescribing physician or other prescriber continues to prescribe the drug;

* * * * *

(f) *Implication of the physician's or other prescriber's supporting statement.* Nothing in this section should be construed to mean that the physician's or other prescriber's supporting statement required for an exceptions request will result in an automatic favorable decision.

41. Revise § 423.580 to read as follows:

§ 423.580 Right to a redetermination.

An enrollee who has received a coverage determination (including one that is reopened and revised as described in § 423.634) may request that it be redetermined under the procedures described in § 423.582, which address requests for a standard redetermination. The prescribing physician or other prescriber (acting on behalf of an enrollee), upon providing notice to the enrollee, may request a standard redetermination under the procedures described in § 423.582. An enrollee or an enrollee's prescribing physician or other prescriber (acting on behalf of an enrollee) may request an expedited

redetermination as specified in § 423.584.

42. Revise § 423.582 to read as follows:

§ 423.582 Request for a standard redetermination.

(a) *Method and place for filing a request.* An enrollee or an enrollee's prescribing physician or other prescriber (acting on behalf of the enrollee) must ask for a redetermination by making a written request with the Part D plan sponsor that made the coverage determination. The Part D plan sponsor may adopt a policy for accepting oral requests.

(b) *Timeframe for filing a request.* Except as provided in paragraph (c) of this section, a request for a redetermination must be filed within 60 calendar days from the date of the notice of the coverage determination.

(c) *Extending the time for filing a request*—(1) *General rule.* If an enrollee or prescribing physician or other prescriber acting on behalf of an enrollee shows good cause, the Part D plan sponsor may extend the timeframe for filing a request for redetermination.

(2) *How to request an extension of timeframe.* If the 60-day period in which to file a request for a redetermination has expired, an enrollee or a prescribing physician or other prescriber acting on behalf of an enrollee may file a request for redetermination and extension of timeframe with the Part D plan sponsor. The request for redetermination and to extend the timeframe must—

(i) Be in writing; and

(ii) State why the request for redetermination was not filed on time.

(d) *Withdrawing a request.* The person who files a request for redetermination may withdraw it by filing a written request with the Part D sponsor.

43. Amend § 423.584 by—

A. Revising paragraph (a).

B. Revising paragraph (b).

C. Revising paragraph (c)(2)(ii).

D. Revising paragraph (d)(2)(iii).

The revisions read as follows:

§ 423.584 Expediting certain redeterminations.

(a) *Who may request an expedited redetermination.* An enrollee or an enrollee's prescribing physician or other prescriber may request that a Part D plan sponsor expedite a redetermination that involves the issues specified in § 423.566(b). (This does not include requests for payment of drugs already furnished.)

(b) *How to make a request.* (1) To ask for an expedited redetermination, an enrollee or a prescribing physician or other prescriber acting on behalf of an enrollee must submit an oral or written request directly to the Part D plan sponsor or, if applicable, to the entity responsible for making the redetermination, as directed by the Part D plan sponsor.

(2) A prescribing physician or other prescriber may provide oral or written support for an enrollee's request for an expedited redetermination.

(c) * * *

(2) * * *

(ii) For a request made or supported by a prescribing physician or other prescriber, the Part D plan sponsor must provide an expedited redetermination if the physician or other prescriber indicates that applying the standard timeframe for conducting a redetermination may seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(d) * * *

(2) * * *

(iii) Informs the enrollee of the right to resubmit a request for an expedited redetermination with the prescribing physician's or other prescriber's support; and

* * * * *

44. Revise § 423.586 to read as follows:

§ 423.586 Opportunity to submit evidence.

The Part D plan sponsor must provide the enrollee or the prescribing physician or other prescriber, as appropriate, with a reasonable opportunity to present evidence and allegations of fact or law, related to the issue in dispute, in person as well as in writing. In the case of an expedited redetermination, the opportunity to present evidence is limited by the short timeframe for making a decision. Therefore, the Part D plan sponsor must inform the enrollee or the prescribing physician or other prescriber of the conditions for submitting the evidence.

45. Amend § 423.590 by revising paragraphs (d)(1), (e), and (f)(2) to read as follows:

§ 423.590 Timeframes and responsibility for making redeterminations.

* * * * *

(d) *Expedited redetermination*—(1) *Timeframe.* A Part D plan sponsor that approves a request for expedited redetermination must complete its redetermination and give the enrollee (and the prescribing physician or other prescriber involved, as appropriate), notice of its decision as expeditiously as the enrollee's health condition requires but no later than 72 hours after receiving the request.

* * * * *

(e) *Failure to meet timeframe for expedited redetermination.* If the Part D plan sponsor fails to provide the enrollee or the prescribing physician or other prescriber, as appropriate, with the results of its expedited redetermination within the timeframe described in paragraph (d) of this section, the failure constitutes an adverse redetermination decision, and the Part D plan sponsor must forward the enrollee's request to the IRE within 24 hours of the expiration of the adjudication timeframe.

(f) * * *

(2) When the issue is the denial of coverage based on a lack of medical necessity (or any substantively equivalent term used to describe the concept of medical necessity), the redetermination must be made by a physician with expertise in the field of medicine that is appropriate for the services at issue. The physician making the redetermination need not, in all cases, be of the same specialty or subspecialty as the prescribing physician or other prescriber.

* * * * *

46. Amend § 423.600 by revising paragraphs (b), (c), and (e) to read as follows:

§ 423.600 Reconsideration by an independent review entity (IRE).

* * * * *

(b) When an enrollee files an appeal, the IRE is required to solicit the views of the prescribing physician or other prescriber. The IRE may solicit the views of the prescribing physician or other prescriber orally or in writing. A written account of the prescribing physician's or other prescriber's views (prepared by either the prescribing physician, other prescriber, or IRE, as appropriate) must be contained in the IRE's record.

(c) In order for an enrollee to request an IRE reconsideration of a determination by a Part D plan sponsor not to provide for a Part D drug that is not on the formulary, the prescribing physician or other prescriber must determine that all covered Part D drugs on any tier of the formulary for treatment of the same condition would not be as effective for the individual as the non-formulary drug, would have adverse effects for the individual, or both.

* * * * *

(e) When the issue is the denial of coverage based on a lack of medical necessity (or any substantively equivalent term used to describe the concept of medical necessity), the reconsideration must be made by a physician with expertise in the field of

medicine that is appropriate for the services at issue. The physician making the reconsideration need not, in all cases, be of the same specialty or subspecialty as the prescribing physician or other prescriber.

Subpart O—Intermediate Sanctions

47. Amend § 423.760 by—

A. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), respectively.

B. Adding new paragraph (b)(2) to read as follows:

§ 423.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

* * * * *

(b) * * *

(2) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more Part D enrollees, CMS may calculate a CMP of up to $25,000 for each Part D enrollee directly adversely affected (or with a substantial likelihood of being adversely affected) by a deficiency.

* * * * *

Subpart P—Premiums and Cost-Sharing Subsidies for Low-Income Individuals

48. Amend § 423.772 by adding the definition for ''Best available evidence'', in alphabetical order, to read as follows:

§ 423.772 Definitions.

* * * * *

Best available evidence means evidence recognized by CMS as documentation or other information that is directly tied to authoritative sources that confirm an individual's low-income subsidy eligibility status, and that must be accepted and used by the Part D sponsor to change low-income subsidy status.

* * * * *

49. Amend § 423.782 by adding new paragraph (c) to read as follows:

§ 423.782 Cost-sharing subsidy.

* * * * *

(c) When the out-of-pocket cost for a covered Part D drug under a Part D sponsor's plan benefit package is less than the maximum allowable copayment, coinsurance or deductible amounts under paragraphs (a) and (b) of this section, the Part D sponsor may only charge the lower benefit package amount.

50. Amend § 423.800 by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 423.800 Administration of subsidy program.

* * * * *

(b) *Reduction of premium or cost-sharing by PDP sponsor or organization*. Based on information provided by CMS under paragraph (a) of this section, or obtained under paragraph (d) of this section, the Part D sponsor offering the Part D plan, in which a subsidy eligible individual is enrolled must reduce the individual's premiums and cost-sharing as applicable, and provide information to CMS on the amount of those reductions, in a manner determined by CMS. The Part D sponsor must track the application of the subsidies under this subpart to be applied to the out-of-pocket threshold.

* * * * *

(d) *Use of the best available evidence process to establish cost-sharing*. Part D sponsors must accept best available evidence as defined in § 423.772 of this part, and update the subsidy eligible individual's LIS status in accordance with a process established by CMS, and within a reasonable timeframe as determined by CMS.

Subpart R—Payment to Sponsors of Retiree Prescription Drug Plans

51. Section 423.882 is amended by—

A. Adding the definition of ''actually paid''.

B. Adding the definition of ''administrative costs''.

C. Revising the definition of ''allowable retiree costs''.

D. Revising the definition of ''gross covered retiree plan-related prescription drug costs'', or ''gross retiree costs''.

E. Adding the definition of ''negotiated prices''.

The additions and revisions read as follows:

§ 423.882 Definitions.

* * * * *

Actually paid means that the costs must be actually incurred by the qualified retiree prescription drug plan and must be net of any direct or indirect remuneration (including discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits offered to some or all purchasers) from any source (including manufacturers, pharmacies, qualifying covered retirees, or any other person) that would serve to decrease the costs incurred under the qualified retiree prescription drug plan. Direct and indirect remuneration includes discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by an intermediary contracting organization with which the sponsor of the qualified retiree prescription drug plan has contracted for administrative services, regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the sponsor of the qualified retiree prescription drug plan and regardless of the terms of the contract between the plan sponsor and the intermediary contracting organization.

Administrative costs means costs incurred by a qualified retiree prescription drug plan that are not drug costs incurred to purchase or reimburse the purchase of Part D drugs. Administrative costs include amounts paid by the sponsor of a qualified retiree prescription drug plan to an intermediary contracting organization for Part D drugs dispensed to qualifying covered retirees in the sponsor's plan that differ from the amount paid by the intermediary contracting organization to a pharmacy or other entity that is the final dispenser of the Part D drugs. For example, any profit or loss retained by an intermediary contracting organization (through discounts, rebates, or other direct or indirect price concessions) when negotiating prices with dispensing entities is considered an administrative cost.

Allowable retiree costs means the subset of gross covered retiree plan-related prescription drug costs actually paid by the sponsor of the qualified retiree prescription drug plan or by (or on behalf of) a qualifying covered retiree under the plan.

* * * * *

Gross covered retiree plan-related prescription drug costs, or *gross retiree costs*, means those actually paid Part D drug costs incurred under a qualified retiree prescription drug plan, excluding administrative costs, but including dispensing fees, during the coverage year. They equal the sum of the following:

(1) The share of negotiated prices (as defined in this section) actually paid by the qualified retiree prescription drug plan that is received as reimbursement by the pharmacy or other dispensing entity, and reimbursement paid to indemnify a qualifying covered retiree when the reimbursement is associated

with a qualifying covered retiree obtaining Part D drugs under the qualified retiree prescription drug plan.

(2) All amounts paid under the qualified retiree prescription drug plan by or on behalf of a qualifying covered retiree (such as the deductible, coinsurance, or cost sharing) in order to obtain Part D drugs that are covered under the qualified retiree prescription drug plan.

* * * * *

Negotiated prices means prices for Part D drugs that—

(1) The qualified retiree prescription drug plan (or other intermediary contracting organization) and the network dispensing pharmacy or other network dispensing provider have negotiated as the amount such network entity will receive, in total, for a particular drug;

(2) Are reduced by those discounts, direct or indirect subsidies, rebates, other price concessions, and direct or indirect remuneration that the qualified retiree prescription drug plan has elected to pass through to qualifying covered retirees at the point of sale; and

(3) Includes any dispensing fees.

* * * * *

52. Add new subpart V to read as follows:

Subpart V—Part D Marketing Requirements

Sec.
423.2260 Definitions concerning marketing materials.
423.2262 Review and distribution of marketing materials.
423.2264 Guidelines for CMS review.
423.2266 Deemed approval.
423.2268 Standards for Part D marketing.
423.2272 Licensing of marketing representatives and confirmation of marketing resources.
423.2274 Broker and agent commissions.
423.2276 Employer group retiree marketing.

Subpart V—Part D Marketing Requirements

§ 423.2260 Definitions concerning marketing materials.

As used in this subpart—

Marketing Materials. (1) Marketing Materials include any informational materials targeted to Medicare beneficiaries which—

(i) Promote the Part D plan.

(ii) Inform Medicare beneficiaries that they may enroll, or remain enrolled in a Part D plan.

(iii) Explain the benefits of enrollment in a Part D plan, or rules that apply to enrollees.

(iv) Explain how Medicare services are covered under a Part D plan, including conditions that apply to such coverage.

(2) Examples of marketing materials include, but are not limited to—

(i) General audience materials such as general circulation brochures, newspapers, magazines, television, radio, billboards, yellow pages, or the Internet.

(ii) Marketing representative materials such as scripts or outlines for telemarketing or other presentations.

(iii) Presentation materials such as slides and charts.

(iv) Promotional materials such as brochures or leaflets, including materials for circulation by third parties (for example, physicians or other providers).

(v) Membership communication materials such as membership rules, subscriber agreements, member handbooks and wallet card instructions to enrollees.

(vi) Letters to members about contractual changes; changes in providers, premiums, benefits, plan procedures etc.

(vii) Membership or claims processing activities.

§ 423.2262 Review and distribution of marketing materials.

(a) *CMS review of marketing materials.* (1) Except as provided in paragraph (a)(2) of this section a Part D plan may not distribute any marketing materials (as defined in § 423.2260 of this Part), or enrollment forms, or make such materials or forms available to Part D eligible individuals unless—

(i) At least 45 days (or 10 days if using certain types of marketing materials that use, without modification, proposed model language as specified by CMS) before the date of distribution, the Part D sponsor submits the material or form to CMS for review under the guidelines in § 423.2264; and

(ii) CMS does not disapprove the distribution of new material or form.

(2) [Reserved]

(b) *File and use.* The Part D sponsor may distribute certain types of marketing materials, designated by CMS, 5 days following their submission to CMS if the Part D sponsor certifies that in the case of these marketing materials, it followed all applicable marketing guidelines and, when applicable, used model language specified by CMS without modification.

§ 423.2264 Guidelines for CMS review.

In reviewing marketing material or enrollment forms under § 423.2262, CMS determines (unless otherwise specified in additional guidance) that the marketing materials—

(a) Provide, in a format (and, where appropriate, print size), and using standard terminology that may be specified by CMS, the following information to Medicare beneficiaries interested in enrolling must consist of:

(1) Adequate written description of rules (including any limitations on the providers from whom services can be obtained), procedures, basic benefits and services, and fees and other charges.

(2) Adequate written explanation of the grievance and appeals process, including differences between the two, and when it is appropriate to use each.

(3) Any other information necessary to enable beneficiaries to make an informed decision about enrollment.

(b) Notify the general public of its enrollment period in an appropriate manner, through appropriate media, throughout its service area.

(c) Include in the written materials notice that the Part D plan is authorized by law to refuse to renew its contract with CMS, that CMS also may refuse to renew the contract, and that termination or non-renewal may result in termination of the beneficiary's enrollment in the Part D plan. In addition, the Part D plan may reduce its service area and no longer be offered in the area where a beneficiary resides.

(d) Ensure that materials are not materially inaccurate or misleading or otherwise make material misrepresentations.

(e) For markets with a significant non-English speaking population, provide materials in the language of these individuals.

§ 423.2266 Deemed approval.

If CMS has not disapproved the distribution of marketing materials or a form submitted by a Part D sponsor for a Part D plan in a Part D region, CMS is deemed to not have disapproved the distribution of the marketing material or form in all other Part D regions covered by the Part D plan, with the exception of any portion of the material or form that is specific to the Part D region.

§ 423.2268 Standards for Part D marketing.

In conducting marketing activities, a Part D plan may not—

(a) Provide for cash or other remuneration as an inducement for enrollment or otherwise. This does not prohibit explanation of any legitimate benefits the beneficiary might obtain as an enrollee of the Part D plan.

(b) Offer gifts to potential enrollees, unless the gifts are of nominal (as defined in the CMS Marketing Guidelines) value, are offered to all eligible members without discrimination, and are not in the form of cash or other monetary rebates. Providing meals for potential enrollees is prohibited, regardless of value.

(c) Engage in any discriminatory activity such as, including targeted marketing to Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.

(d) Solicit door-to-door for Medicare beneficiaries or through other unsolicited means of direct contact, including calling a beneficiary without the beneficiary initiating the contact.

(e) Engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the Part D sponsor or its Part D plan. The Part D organization may not claim that it is recommended or endorsed by CMS or Medicare or the Department of Health and Human Services or that CMS or Medicare or the Department of Health and Human Services recommends that the beneficiary enroll in the Part D plan. The Part D organization may explain that the organization is approved for participation in Medicare.

(f) Market non-health care related products to prospective enrollees during any Part D sales activity or presentation. This is considered cross-selling and is prohibited.

(g) Market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment.

(h) Market additional health related lines of plan business not identified prior to an in-home appointment without a separate appointment that may not be scheduled until 48 hours after the initial appointment.

(i) Distribute marketing materials for which, before expiration of the 45-day period, the PDP Sponsor receives from CMS written notice of disapproval because it is inaccurate or misleading, or misrepresents the PDP Sponsor, its marketing representatives, or CMS.

(j) Use providers, provider groups, or pharmacies to distribute printed information comparing the benefits of different Part D plans unless providers, provider groups or pharmacies accept and display materials from all Part D plan sponsors.

(k) Conduct sales presentations or distribute and accept Part D plan enrollment forms in provider offices, pharmacies or other places where health care is delivered.

(l) Conduct sales presentations or distribute and accept plan applications at educational events.

(m) Employ Part D plan names that suggest that a plan is not available to all Medicare beneficiaries.

(n) Display the names and/or logos of co-branded network providers on the organization's member identification card. Other marketing materials that include names and/or logos of provider co-branding partners must clearly indicate that other providers are available in the network.

(o) Engage in any other marketing activity prohibited by CMS in its marketing guidance.

§ 423.2272 Licensing of marketing representatives and confirmation of marketing resources.

In its marketing, the Part D organization must—

(a) Demonstrate to CMS's satisfaction that marketing resources are allocated to marketing to the disabled Medicare population as well as beneficiaries age 65 and over.

(b) Establish and maintain a system for confirming that enrolled beneficiaries have in fact enrolled in the PDP and understand the rules applicable under the plan.

(c) Employ as marketing representatives only individuals who are licensed by the State to conduct direct marketing activities (as defined in the Medicare Marketing Guidelines) in that State, and whom the sponsor has informed that State it has appointed, consistent with the appointment process provided for under State law, except that any fees required under such appointment process do not apply.

§ 423.2274 Broker and agent commissions.

If a Part D sponsor markets through independent brokers or agents—

(a)(1) In paying a commission or other compensation (collectively referred to as ''commission'') to such agent or representative, the commission the agent would receive for selling or servicing the policy in the first year could not exceed the commission the agent receives for selling or servicing the policy in all subsequent years.

(2) The commission must be the same for all plans and all plan product types offered by the sponsor's parent organization.

(b) It must ensure agents selling Medicare products are trained on Medicare rules and regulations specific to the plan products they intend to sell.

(c) It must ensure agents selling Medicare products are tested, as specified in CMS guidance.

(d) Upon CMS's request, a sponsor must provide to CMS the information necessary for it to conduct oversight of marketing activities.

(e) It must comply with State requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual's conduct. CMS will establish and maintain a memorandum of understanding (MOU) to share compliance and oversight information with States that agree to the MOU.

§ 423.2276 Employer group retiree marketing.

Part D sponsors may develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the Part D sponsor, and furnish these materials only to the group members. These materials are not subject to CMS prior review and approval.

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

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

Dated: January 17, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: February 19, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. 08–1244 Filed 5–8–08; 8:45 am]

BILLING CODE 4120–01–P

Federal Register

Friday,
May 16, 2008

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 59

Livestock Mandatory Reporting; Reestablishment and Revision of the Reporting Regulation for Swine, Cattle, Lamb, and Boxed Beef; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Docket No. AMS–LS–07–0106]

RIN 0581–AC67

Livestock Mandatory Reporting; Reestablishment and Revision of the Reporting Regulation for Swine, Cattle, Lamb, and Boxed Beef

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: On April 2, 2001, the Agricultural Marketing Service (AMS) implemented the Livestock Mandatory Reporting (LMR) program as required by the Livestock Mandatory Reporting Act of 1999 (1999 Act). The statutory authority for the program lapsed on September 30, 2005. In October 2006, legislation was enacted to reauthorize the 1999 Act until September 30, 2010, and to amend the swine reporting requirements of the 1999 Act (Pub. L. 109–296) (Reauthorization Act). This final rule will re-establish the regulatory authority for the program's continued operation and incorporate the swine reporting changes contained within the Reauthorization Act as well as make other changes to enhance the program's overall effectiveness and efficiency based on AMS' experience in the administration of the program over the last 6 years.

DATES: *Effective Date:* This final rule is effective July 15, 2008.

FOR FURTHER INFORMATION CONTACT: Warren P. Preston, Chief, Livestock and Grain Market News Branch at (202) 720–6231, fax (202) 690–3732, or e-mail *Warren.Preston@usda.gov*.

Information about these regulations will be posted on the Livestock and Grain Market News Web site: *http://www.ams.usda.gov/lsmnpubs/*.

SUPPLEMENTARY INFORMATION:

Background

The 1999 Act was enacted into law on October 22, 1999 (Pub. L. 106–78), as an amendment to the Agriculture Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). In the December 1, 2000, **Federal Register**, AMS published a final rule implementing the program (65 FR 75464) (2000 final rule) with an effective date of January 30, 2001. This effective date was subsequently delayed until April 2, 2001.

The statutory authority for the program lapsed on September 30, 2005. In October 2006, legislation was passed to reauthorize the 1999 Act until September 30, 2010, and amend swine reporting requirements.

Because reauthorization was not completed by September 30, 2005, AMS sent letters to each packer required to report under the 1999 Act requesting their voluntary cooperation in continuing to submit information. Based on the response to AMS' request for voluntary packer participation in LMR, most reports have continued to be published. The only reports that are not being published are imported boxed lamb cuts and slaughter cow reports. AMS has continued compliance audits during the lapse in authority for the mandatory program for companies that agreed to continue submitting information and will continue this practice.

The 1999 Act as originally passed provided for the mandatory reporting of market information by Federally inspected livestock processing plants that have slaughtered an average number of livestock during the immediately preceding 5 calendar years (125,000 for cattle and 100,000 for swine), including any processing plant that did not slaughter during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the plant's capacity. For entities that did not slaughter during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, AMS projects the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in this regulation.

The 1999 Act also gave the Secretary of Agriculture (Secretary) the latitude to provide for the reporting of lamb information. Under the 2000 final rule implementing the program, Federally inspected lamb processing plants that slaughtered an average of 75,000 head of lambs or processed an average of 75,000 lamb carcasses during the immediately preceding 5 calendar years were required to submit information to AMS. Additionally, a lamb processing plant that did not slaughter an average of 75,000 lambs or process an average of 75,000 lamb carcasses during the immediately preceding 5 calendar years was required to report information if the Secretary determined the processing plant should be considered a packer based on its capacity. In addition, the final rule also established that for any calendar year, an importer of lamb that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years report information on the domestic sales of imported boxed lamb cuts. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years was required to report information if the Secretary determined that the person should be considered an importer based on their volume of lamb imports. On September 2, 2004, AMS published a final rule (69 FR 53783)(2004 final rule) that revised the threshold for importers to 2,500 metric tons and modified the definition of carlot when used in reference to boxed lamb cuts.

Key Components of the Statute

Cattle

The Reauthorization Act did not modify the cattle reporting requirements contained in the 1999 Act. The 1999 Act requires that a cattle packer whose Federally inspected plant slaughtered an average of at least 125,000 cattle per year for the preceding 5 calendar years or did not slaughter cattle during the preceding 5 calendar years but is considered a packer based on plant capacity as determined by the Secretary, report market information to the Secretary. They are required to report the prices for each type of cattle purchase, categorized to clearly delineate imported from domestic market purchases, negotiated purchase, formula marketing arrangement, and forward contract; the quantity of cattle, categorized to clearly delineate imported from domestic market purchases, purchased on a live weight basis and a carcass basis; and the weight, the quality grade, and premiums and discounts. This information will be reported twice a day not later than 10 a.m. and 2 p.m. central time. The Secretary will issue reports to the public of this information at least three times each day.

The 1999 Act further requires that a packer report marketing information not later than 9 a.m. central time on the first reporting day of each week for cattle bought by the type of purchase for the prior week. In addition, the 1999 Act states that packers must report weekly information on the first reporting day not later than 9 a.m. central time for cattle purchased on a formula or contract marketing arrangement and slaughtered the prior week. However, under this regulation, the required information for the weekly submission for cattle purchased on a formula will be obtained by aggregating packers' daily submissions of this information. Therefore, no additional weekly submission will be required for this

purchase type. The Secretary will issue a public report not later than 10 a.m. central time on the first reporting day of the current slaughter week.

The 1999 Act also mandates that a packer report information on boxed beef cut sales to the Secretary at least twice each reporting day not less frequently than once before and once after 12 noon central time. This information includes the price per hundredweight, the quantity in each lot of boxed beef cuts sold, information regarding the characteristics of each lot (i.e., domestic vs. export sale, USDA Quality Grade, etc.), the type of beef cut and the trim specification. The Secretary will report this information to the public twice each reporting day.

Swine

The Reauthorization Act revised the requirements for swine reporting. Under the 1999 Act, the term packer includes a Federally inspected plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years. Under the Reauthorization Act, the term packer also includes a person that slaughtered an average of at least 200,000 sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant or person that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant or person should be considered a packer under this subpart after considering its capacity.

The Reauthorization Act separated the reporting requirements for sows and boars from barrows and gilts. For barrows and gilts, the packer must report to the Secretary not later than 7 a.m. central time on each reporting day information regarding all swine purchased or priced, during the prior business day of the packer. The Reauthorization Act modified the reporting time for information regarding all barrows and gilts slaughtered during the prior business day from not later than 7 a.m. central time to not later than 9 a.m. central time on each reporting day. The packer must report all purchase data including the number of barrows and gilts purchased, barrows and gilts scheduled for delivery and the base price and purchase data for slaughtered barrows and gilts for which a price has been established. The information also includes all slaughter data for the total number of barrows and gilts slaughtered including information concerning the net price, average net price, lowest net price, highest net price, average carcass weight, average sort loss, average backfat, average lean percentage, and total slaughter quantity. However, the information on the lowest net price and highest net price can be obtained from the LMR system from packers' submissions. Therefore, under this rule, there is no requirement for packers to submit this information separately. Packers reporting the average lean percentage must report the manner in which the average lean percentage is calculated as well as whenever a change in such calculation is made. In doing so, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary will convert to the carcass measurements or lean percentage of the swine of the individual packer to correlate to a common percent lean measurement. Additionally, the information to be reported includes packer purchase commitments, which shall be equal to the number of barrows and gilts scheduled for delivery to a packer for slaughter each of the next 14 calendar days.

The Secretary will publish the information in a prior day report not later than 8 a.m. central time for all swine purchased and 10 a.m. central time for all barrows and gilts slaughtered on the reporting day on which the information is received from the packer. In addition, as required by the Reauthorization Act, the Secretary shall publish a net price distribution for all barrows and gilts slaughtered on the previous day not later than 3 p.m. central time.

The Reauthorization Act also requires packers that process barrows and gilts to report to the Secretary in the morning not later than 10 a.m. central time and in the afternoon not later than 2 p.m. central time each reporting day. The reporting requirements for the morning and afternoon reports contained in the Reauthorization Act for barrows and gilts were not altered from those contained in the 1999 Act. The information to be reported is the same for the morning and afternoon reports and includes an estimate of (1) the total number of barrows and gilts purchased by each method of pricing, (2) the total number of barrows and gilts purchased, and (3) the base price paid for all negotiated purchases of market hogs and the base price paid for each type of purchase of market hogs other than through a negotiated purchase. This information must be submitted for all covered transactions made up to within one half hour of each specified reporting time. Packers completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. The Secretary will make the morning report available to the public not later than 11 a.m. central time and the afternoon report at 3 p.m. central time on each reporting day.

The Reauthorization Act requires each packer of sows and boars to report to the Secretary not later than 9:30 a.m. central time, or such other time as the Secretary considers appropriate, on each reporting day, information regarding all sows and boars purchased or priced during the prior business day of the packer. The information to be reported includes the total number of sows and boars purchased, each divided into at least three weight classes specified by the Secretary, the number of sows and boars that qualify as packer-owned swine, the average price paid for all sows and boars, the average price paid for sows and boars in each weight class, the number of sows and boars for which prices are determined, by each type of purchase, and the average prices for sows and boars for which prices are determined, by each type of purchase. The Secretary will publish the information in a prior day report not later than 11 a.m. central time on the reporting day on which the information is received from the packer. Under the 1999 Act, the reporting requirements for sows and boars were the same as the reporting requirements for barrows and gilts.

The Secretary will compile and issue a weekly noncarcass merit premium report on the first reporting day of the week not later than 5 p.m. central time. This report will be prepared from information furnished to the Secretary by packers who must report not later than 4 p.m. central time on the first reporting day of the week. The information required includes noncarcass merit premiums used and paid to producers during the prior slaughter week by category.

The 1999 Act provides that the Secretary review the information required to be reported by packers at least once very two years. Also, the 1999 Act directs the Secretary to promulgate regulations that specify additional information to be reported by packers if the Secretary determines information currently reported does not accurately reflect the methods by which swine are valued or priced, or account for the fact that packers that slaughter a significant majority of the swine produced in the United States no longer use backfat or

lean percentage factors as indicators of price.

Lamb

The Reauthorization Act did not change the lamb reporting provisions contained in the 1999 Act. The 1999 Act gives the Secretary the authority to establish a mandatory lamb price reporting program that will provide timely, accurate, and reliable market information. It does not specify the requirements for establishing a mandatory lamb price reporting program as it does for cattle and swine. Accordingly, in the 2000 final rule, AMS established a mandatory lamb price reporting program based upon its extensive knowledge of the lamb industry and market news reporting of lamb.

Under the established program, a lamb packer whose Federally inspected plant slaughtered or processed an average of at least the equivalent of 75,000 lambs each year for the preceding 5 calendar years reports to the Secretary once daily the price of each type of lamb purchase, negotiated purchase, formula marketing arrangements, forward contract, quantity of lamb purchased on live weight or carcass weight, a range and average estimated live weights, quality grade, premiums and discounts, class type, pelt type, state of origin, and estimated dressing percentage. The Secretary issues a report to the public on this information not less than once each day.

Lamb packers are required to report to the Secretary on a weekly basis on the second reporting day of the week information from the prior week. This information includes the quantity and certain carcass characteristics of lambs purchased through a formula marketing arrangement or forward contract that were slaughtered, and the quantity and carcass characteristics of packer owned lamb that were slaughtered. Reported information includes, by type of purchase, the quantity of lamb purchased on live weight and carcass weight basis that were slaughtered, the quality grade, premiums and discounts paid, and dressing percentage. In addition, a lamb packer is required to report the quantity and basis level for forward contracts, the range and average of intended premiums and discounts, and the expected slaughter date. Under this rule, packers will also be required to report information on the quantity of lambs purchased on a negotiated basis.

The Secretary makes available to the public the information on the second reporting day of the current slaughter week.

Packers report information on daily sales of carcass lamb and sales of boxed lamb cuts each reporting day. Under this rule, packers will also be required to report carcass purchases. Due to the changing structure of the lamb industry, an increasing number of transactions are not required to be reported under the existing regulation. Requiring packers to also report their carcass purchases will greatly increase the volume of covered transactions.

For sales and purchases of carcass lamb, the information includes prices for each lot, the type of sale, the quantity of each sale quoted in number of carcasses, the USDA grade, the estimated weight range, and delivery date. For sales of boxed lamb cuts, the packer reports the price for each lot, the quantity for each lot quoted by product weight, the type of sale, branded product characteristics, if applicable, the USDA quality and yield grade, the cut of lamb, the product state of refrigeration, the weight range of each cut, and the delivery period. The Secretary issues to the public a report on carcass lamb sales and boxed lamb cut sales once each reporting day.

For any calendar year, a lamb importer who imports an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years reports to the Secretary weekly the prices received for imported lamb cuts sold on the domestic market. Additionally, an importer that does not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years is also required to report the above information, if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

Other Provisions of the Act Involving Administration

The administrative provisions of the 1999 Act set forth the requirements for maintaining confidentiality regarding the packer reporting of proprietary information and list the conditions under which Federal employees can release such information. These administrative provisions also establish that the Secretary can make necessary adjustments in the information reported by packers and take action to verify the information reported, and directs the Secretary to report and publish reports by electronic means to the maximum extent practical.

The 1999 Act enumerates unlawful acts and provides for what constitutes violations of that Act. To be unlawful and a violation, a packer or other subject person must willfully engage in a prohibited practice. Prohibited acts include failing to report the required information timely; failing to report accurate information; soliciting that any person fail to provide the required information accurately or timely, as a condition of any transaction; failing or refusing to comply with the requirements; or reporting estimated information in a manner that demonstrates a pattern of significant variance when compared to the actual information that is reported for the same period. The Reauthorization Act did not change any of these provisions.

The section on enforcement establishes a civil penalty—not more than $10,000—that may be assessed for each violation and provides that the Secretary may issue a cease and desist order in addition to, or in lieu of, a civil penalty. Each day that a violation continues shall be considered to be a separate violation. Factors to be considered in determining the amount of a civil penalty are the gravity of the offense, the size of the business involved, and the effect of the penalty on the ability of the involved person to remain in business. In determining whether to assess a civil penalty, the Secretary shall consider whether the person engaged in a pattern of errors, delays, or omissions that were in violation.

The section on enforcement also provides that no civil penalty shall be assessed, or cease and desist order issued, unless the person involved is given notice and opportunity for a hearing before the Secretary with respect to the violation. This section also spells out requirements for judicial review, details procedures for issuance of an injunction or restraining order, and establishes a civil penalty of not more than $10,000 for each offense for failure to obey a cease and desist order.

The fees section directs the Secretary to not charge or assess fees for the submission, reporting, receipt, availability, or access to published reports or information collected through this program.

The section on recordkeeping requires each packer to make available to the Secretary on request for 2 years the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products, as well as such records or other information that is necessary or appropriate to verify the accuracy of information required to be reported. Also, the 1999 Act provides

that reporting entities will not be required to report new or additional information that they do not generally have available or maintain, or the provisions of which would be unduly burdensome.

Further, the 1999 Act provides that the Secretary may suspend any requirement if the Secretary determines that the application of the requirement would be inconsistent with the Act.

Requirements

Summary of Changes

The requirements of this regulation are discussed in detail in the sections immediately following. However, for the ease of the reader, this section contains descriptions and rationale of the substantive changes that have been made as compared to the December 1, 2000, and September 2, 2004 (that modified reporting requirements for lamb), final rules and the August 8, 2007, proposed rule that were published in the **Federal Register**.

Recordkeeping

To reduce the recordkeeping burden on lamb importers, the Agency modifies the recordkeeping requirement to allow lamb importers to maintain a record of sale that evidences only the date the sale occurred rather than the time and date. Because lamb importers are required to report only weekly, the date the sale occurred is sufficient for recordkeeping purposes.

Definitions

The Agency modifies the definition of the term ''discount'' by adding ''or other characteristic'' to allow for the inclusion of other types of discounts such as a discount for an animal's age, which is currently utilized by several reporting packers.

In the proposed rule published in the August 8, 2007 **Federal Register**, the Agency proposed to modify the definitions of the terms ''negotiated purchased'' and ''negotiated sale'' by removing the language ''and agreement on a delivery day.'' As discussed in the comments and responses section, the language is reinserted into the respective definitions.

The Agency adds a definition for the term ''negotiated grid purchase.'' When the LMR program was first implemented on April 2, 2001, negotiated grid purchases, purchases in which the base price is determined by seller-buyer interaction from which premiums are added and discounts are subtracted, were coded in packer submissions as formulas as the system was not initially configured to allow these two distinct transaction types to be coded separately. The Agency subsequently made a programming change to rectify this problem and adds this definition for clarity.

The Agency adds a definition for the term ''percent lean'' for clarification with respect to cow and bull reporting requirements. The Agency also added a definition for the term ''person'' for clarity.

Cattle Reporting

The majority of the changes being made with respect to cattle reporting relate to the separation of the reporting requirements for cows and bulls. Separation of the reporting requirements for cows and bulls is made to minimize the reporting burden on cow and bull packers where possible and to make the information published for cows and bulls and the resulting meat products more meaningful to the industry.

The Agency modifies the definition of the term ''boxed beef'' to remove references to age limitations on products and to require packers to report transactions for frozen primals, subprimals, and cuts in addition to the current requirement for packers to submit information on frozen beef trimmings and boneless processing beef. Neither the 1999 Act nor the Reauthorization Act defines the term ''boxed beef.'' Hence the term must be defined by regulation. These modifications to the definition will provide for more complete reporting of the boxed beef trade, consistent with the law's purpose of improving the price and supply reporting conditions of USDA. Although the revised definition of ''boxed beef'' potentially will result in the reporting of more transactions by packers to AMS, the Agency believes that there will be little to practically no increase in the reporting burden to packers. The cost to packers of reporting all trades versus sorting out trades beyond certain parameters is minimal, and in many cases, may even be less burdensome than sorting out transactions prior to submission to AMS.

In the 2000 final rule, the definition of ''boxed beef'' specified that the product not exceed one of three different dates from manufacture, depending on the specific item in question. For example, primals, subprimals, and cuts fabricated from subprimals were not to be older than 14 days from the date of manufacture, while fresh ground beef, beef trimmings, and boneless processing beef were not to be older than 7 days from the date of manufacture. By removing references to these different cutoff dates, there will be less confusion in terms of what information reporting packers are required to submit, and hence, less uncertainty regarding the information that is subsequently reported and disseminated by AMS. In addition, new technologies in packaging and processing continue to extend the shelf life of meat products, and product that may have been considered aged or distressed at the time of the 2000 final rule may now be well within its usable shelf life. Removing references to product age in the definition of ''boxed beef'' will reflect such changes in the state of the industry. As discussed in the comments and responses section, however, the reporting form for boxed beef is modified from the proposed rule by delineating between fresh product that is 14 days or less from that which is more than 14 days from the date of manufacture.

The 2000 final rule defined ''boxed beef'' to include fresh primals, subprimals, cuts fabricated from subprimals, ground beef, beef trimmings, and boneless processing beef. The definition also included frozen beef trimmings and boneless processing beef. By removing the references to fresh or frozen product, the final rule reduces confusion on the part of reporting packers regarding whether or not to submit information on particular trades. AMS believes that this modification of the definition of ''boxed beef'' will result in minimal to virtually no increase in burden to reporting packers. In the case of frozen products, numerous reporting packers already submit information on all frozen products. Due to the nature of their electronic systems, it is in many cases often less burdensome for packers to submit everything rather than having to sort through eligible transactions. AMS believes that reporting of trade in frozen products will provide a more accurate and comprehensive picture of the market for boxed beef, consistent with the purposes of the 1999 Act to improve the price and supply reporting services of USDA. For instance, trading of frozen product picked up with the reopening of foreign markets following the closures that resulted from the discovery of a cow with bovine spongiform encephalopathy in the United States in December 2003. Because a majority of packers are reporting frozen boxed beef trades, AMS has been able to show the number of frozen export loads in its comprehensive boxed beef cutout report. Requiring all packers to submit information on frozen product trades will ensure that such reporting will

represent a more complete reflection of market conditions.

The Agency modifies the definition of the term ''carlot-based'' such that for cow and bull boxed beef items, the term ''carlot-based'' includes any transaction between a buyer and seller consisting of 2,000 pounds or more of one or more individual items. As discussed in the comments and responses, the 2,000 pound threshold is a reduction from the 5,000 pound threshold provided for in the proposed rule. This modification reflects current industry practice with respect to the marketing of cow and bull products.

The Agency modifies the definition of the term ''terms of trade'' to clarify that the requirement to report the terms of trade applies only to steers and heifers to coincide with the separation of reporting requirements for cows and bulls from steers and heifers. The definition of ''terms of trade'' is also modified to require packers to distinguish between negotiated transactions that are scheduled for delivery not later than 14 days and those negotiated transactions that are scheduled for delivery more than 14 days, but fewer than 30 days. Currently, transactions that are for delivery more than 14 days out are to be coded as forward contracts. This modification does not require packers to submit additional transactions, but does allow AMS to identify separately these types of transactions, which is a concern of some in the industry.

The Agency modifies the definition of the term ''type of purchase'' to include ''negotiated grid purchase'' as a type of purchase.

The Agency adds a definition for the term ''white cow'' to provide clarity to the cow and bull reporting requirements.

Compared to the 2000 final rule, the Agency modifies and renumbers the sections that relate to the daily and weekly reporting requirements for live cattle. Section 59.101 and section 59.103 contain the daily and weekly reporting requirements for steers and heifers. Section 59.102 contains the daily reporting requirements for cows and bulls.

With regard to section 59.101, packers no longer are required to report the range of weights of cattle purchased. In addition, the phrase ''or other characteristics'' is added to the premium and discount reporting requirement to allow for the reporting of other kinds of premiums and discounts such as those associated with an animal's age.

Section 59.102 contains the reporting requirements for cow and bull purchases. In an effort to reduce the reporting burden on cow and bull packers, only the information that pertains to the way cows and bulls are marketed is required to be reported. For example, cow and bull packers no longer have to report committed and delivered information. In addition, there no longer is a weekly reporting requirement for cows and bulls.

With regard to section 59.103, packers are required to report the quantity of cattle purchased on a negotiated basis and on a negotiated grid basis that were slaughtered in addition to the previous requirement to report the number of cattle purchased through forward contracts, formula marketing arrangements and the quantity and carcass characteristics of packer-owned cattle that were slaughtered. In addition, packers are required to provide the basis level month and delivery year for all cattle purchased through forward contracts in addition to the previous requirement to report the basis level and delivery month. These changes are necessary to make the information published in AMS market reports more meaningful and useable by the industry by providing a complete picture of the prior week's slaughter with respect to the numbers of cattle harvested under each purchase type. Prices for negotiated purchases and negotiated grid purchases are collected currently, but prior week slaughter numbers for these types of purchases are not now collected. However, the addition of this reporting requirement is expected to have little impact on the reporting burden to packers, while contributing to the completeness of the information disseminated under the program.

Another change under section 59.103 is that packers are required to provide the basis level month and delivery year for all cattle purchased through forward contracts in addition to the previous requirement to report the basis level and delivery month. The basis level month and delivery year are necessary to provide a more accurate picture of the forward contract market and will allow AMS to publish more meaningful information. Also, the added information reflects the current industry practice of sometimes contracting out very far into the future, making it necessary to know the delivery year to categorize transactions properly according to not only the month but also the year of delivery.

Finally, in another effort to reduce the burden on reporting packers, the weekly requirement to report information for cattle purchased through a formula marketing arrangement and slaughtered during the prior slaughter week is removed as the Agency can obtain this information by aggregating packers' daily submissions.

Swine

As required by the Reauthorization Act, the reporting requirements for sows and boars are separated from the reporting requirements for barrows and gilts. Thus under this rule, section 59.202 contains the reporting requirements for barrows and gilts and section 59.203 contains the reporting requirements for sows and boars. Compared to the August 8, 2007, proposed rule, section 59.203 was modified for consistency in numbering and to delete a subsection that had been reserved. Former section 59.203(a)(5) is re-designated as section 59.203(b), and the term ''Publication'' is added to the beginning of the re-designated section. Former section 59.203(b) [Reserved] is deleted.

The Reauthorization Act also makes a few other modifications to the swine reporting provisions. Specifically, the definition of a packer is modified to also include a person that slaughtered an average of 200,000 head of sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Under the 1999 Act, a packer was defined as a swine processing plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years. The Reauthorization Act also changes the reporting timeframe for packers to submit prior day slaughtered swine information from 7 a.m. central time to 9 a.m. central time and requires the Secretary to publish a net price distribution on all barrows and gilts slaughtered the previous day.

In addition to the changes required by the Reauthorization Act, the Agency makes a few other minor modifications to reduce the reporting burden on swine packers. A definition of the term ''inferior swine'' is added to allow packers to exclude information on inferior hogs, which are discounted in the marketplace, from their data submissions to AMS. Also, the requirement to submit information on the lowest net price and the highest net price has been removed as the Agency can obtain this information from the LMR system from packer submissions.

Lamb

As previously discussed, the Reauthorization Act did not change the reporting provisions for lamb. However, the Agency makes a few changes to reduce the reporting burden on lamb packers where possible and to provide

more meaningful information in AMS market reports.

The Agency deletes the definitions for the terms ''lambs committed'' and ''terms of trade'' as the requirements to submit this information are deleted to reduce the reporting burden on packers. The Agency adds a definition for the term ''yield grade lamb carcass reporting'' to add further clarification to the requirement to report yield grade information.

Compared to the August 8, 2007, proposed rule, section 59.301 is modified for consistency in numbering and to delete a subsection that had been reserved. The language from the former section 59.301(a)(1) is incorporated into section 59.301(a) with no change in meaning. Former sections 59.301(a)(1)(i) through 59.301(a)(1)(x) are re-designated as sections 59.301(a)(1) through 59.301(a)(10). Former section 59.301(a)(2) is re-designated as section 59.301(b), and the word ''Publication'' is added to the beginning of the re-designated section. Finally, former section 59.203(b) [Reserved] is deleted.

With respect to weekly reporting, the Agency requires packers to submit information on the quantity of lambs purchased through a negotiated purchase that were slaughtered in addition to the previous requirement to submit this type of information on packer-owned lambs, lambs purchased through forward contracts, and lambs purchased under a formula arrangement. This change will allow AMS to publish more meaningful market information in AMS market reports.

With respect to reporting requirements for lamb carcasses, the Agency requires packers to submit information on their carcass purchases in addition to the current requirement to report carcass sales. Due to the changing structure of the lamb industry, an increasing number of transactions are not required to be reported under the prior regulation. Requiring packers to also report their carcass purchases will greatly increase the volume of covered transactions and will allow AMS to publish more meaningful information in AMS market reports.

General Provisions

Subpart A of part 59, General Provisions, covers those requirements pertinent to all aspects of mandatory reporting. Section 59.10 details how packers and importers are required to report information and how reporting will be handled over weekends and holidays. Electronic reporting is required for all information collection. Electronic reporting involves the transfer of data from a packer's or importer's existing electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS.

Once the required information has been entered into the AMS database, it will be aggregated and processed into various market reports that will be released according to the daily and weekly time schedule set forth in these regulations.

Section 59.20 identifies the recordkeeping requirements imposed by the 1999 Act and these regulations on packers and importers. Reporting packers and importers are required to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. In addition, they are required to maintain such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under these regulations. All of the above mentioned paperwork must be maintained by packers and importers for at least 2 years. These records must be made available to employees or agents of USDA for routine compliance audits as well as for investigations involving suspected noncompliance or potential violations. More information regarding compliance and review procedures can be found in the LMR Information section of the Livestock and Grain Market News Web site.

Further, packers are required to maintain a record to indicate the time a lot of cattle or swine was purchased, or a unit of boxed beef cuts was sold, as occurring either before 10 a.m. central time, between 10 a.m. and 2 p.m. central time, or after 2 p.m. central time. Lamb packers are required to maintain a record to indicate the time a lot of lambs was purchased or a lot of lamb carcasses was purchased or sold or boxed lamb cuts were sold, as occurring either before 2 p.m. central time or after 2 p.m. central time. For lamb importers, the record of sale shall evidence the date the sale occurred. However, to allow packers and importers time to collect, assemble and submit the information to AMS by the prescribed deadlines, all covered transactions up to within one half hour of the specified reporting times are to be reported.

Lastly, under subpart A, section 59.30 details the general definitions of terms used throughout the regulations, which are applicable to all subparts. The majority of these definitions remain unchanged from those that were published in the 2000 final rule. However, as previously discussed, the following changes are made: Minor modifications to the definition of ''discount''; the addition of a definition for ''negotiated grid purchase''; the addition of a definition of ''percent lean''; and the addition of a definition of ''person.'' The minor modifications to the definitions of ''negotiated purchase'' and ''negotiated sale'' contained in the proposed rule are not included in this final rule, and the definitions of the two terms remain unchanged from the 2000 final rule.

Cattle

Subpart B of part 59 states what is required to be reported in the cattle and boxed beef sectors. For the most part, the reporting requirements are similar to those published in the December 1, 2000, final rule. The specific changes have been discussed in a previous section in this document. Section 59.100 provides definitions of cattle terms used in subpart B, including the definition of packer, which identifies which entities will be required to report under this rule. In any calendar year, the term cattle packer includes any Federally inspected cattle plant that slaughtered an average of 125,000 head of cattle a year for the immediately preceding 5 calendar years. Additionally, the term includes any processing plant that did not slaughter cattle during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on its capacity.

For entities that did not slaughter cattle during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

The definition of ''boxed beef'' includes fresh and frozen primals, subprimals, cuts fabricated from subprimals (with some exclusions), and fresh and frozen ground beef, beef trimmings, and boneless processing beef.

The definition of ''terms of trade'' applies to steers and heifers only and includes the percentage of steers and heifers purchased by a packer as a negotiated purchase that are scheduled to be delivered to the plant for slaughter not later than 14 days and the

percentage of slaughter steers and heifers purchased by a packer as a negotiated purchase that are scheduled to be delivered to the plant for slaughter more than 14 days but fewer than 30 days.

The term ''type of purchase'' with respect to cattle, means a negotiated purchase, negotiated grid purchase, a formula market arrangement, and a forward contract.

The term ''white cow'' means a cow on a ration that tends to produce white fat.

As previously discussed, the reporting requirements for cows and bulls are separated from the reporting requirements for steers and heifers, which will reduce the reporting burden on cow and bull packers. Section 59.101 discusses the daily reporting requirements for steer and heifer transactions, including what information will be reported, when it will be reported, and when it will be published. Steer and heifer plants covered under the rule will report the details of their purchases twice each day to AMS (once by 10 a.m. central time, and once by 2 p.m. central time) and will include all covered transactions made up to within one half hour of the specified reporting time. Packers completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. The Secretary will publish the information not less than three times each day. Section 59.102 discusses the daily reporting requirements for cows and bulls, including what information will be reported, when it will be reported, and when it will be published. Cow and bull plants covered under this rule will be required to report the base bid price intended to be paid for slaughter cow and bull carcasses on that day not later than 10 a.m. central time and the prices for cattle purchased during the previous day not later than 2 p.m. central time. The Secretary will publish the information within one hour of the required reporting time on the reporting day on which the information is received by the packer. Section 59.103 discusses the requirements for weekly reporting for steers and heifers. Packers will be required to report information regarding the prior slaughter week on the first reporting day of each week not later than 9 a.m. central time. This information includes the quantity of cattle purchased through a negotiated basis that were slaughtered; the quantity of cattle purchased through a negotiated grid basis that were slaughtered; the quantity of cattle purchased through forward contracts that were slaughtered; the quantity of cattle delivered under a formula marketing arrangement that were slaughtered; the quantity and carcass characteristics of packer-owned cattle that were slaughtered; the quantity, basis level, basis level month, and delivery month and year for all cattle purchased through forward contracts; and the range and average of intended premiums and discounts that are expected to be in effect for the current slaughter week. This information will be published by the Secretary on the same day by 10 a.m. central time. Finally, under subpart B, section 59.104 details the information required to be reported concerning sales of boxed beef cuts including what will be reported, when it will be reported, and when it will be published. Cattle plants producing boxed beef cuts will be required to report their domestic and export sales of boxed beef cuts including branded boxed beef cuts to AMS twice each reporting day, once by 10 a.m. central time and once by 2 p.m. central time. This should include all covered transactions made up to within one half hour of the specified reporting time. Cattle plants completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. This information will be published by the Secretary twice each day. These plants will be required to reference the Institutional Meat Purchase Specifications (IMPS) for Fresh Beef Products Series 100, United States Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program, when applicable.

Swine

The Reauthorization Act made several changes to the swine reporting provisions. The Agency makes a few other minor modifications, which are discussed in detail in a previous section in this document, for clarity and to reduce the reporting burden on packers.

Subpart C of part 59 lists the requirements of swine reporting beginning with section 59.200, which establishes definitions for terms used throughout the subpart including the definition of a packer. In any calendar year, the term swine packer includes a Federally inspected plant that slaughtered an average of at least 100,000 swine per year during the immediately preceding 5 calendar years and a person that slaughtered an average of at least 200,000 sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant or person that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant or person should be considered a packer under this subpart after considering its capacity. For entities that did not slaughter swine during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

Section 59.202 discusses the daily reporting requirements for barrows and gilts including what information will be reported, when it will be reported, and when it will be published.

For barrows and gilts, packers required to report under this rule will report the details of their barrows and gilts purchases three times each day including a prior day report not later than 7 a.m. central time, a morning report not later than 10 a.m. central time, and an afternoon report not later than 2 p.m. central time, including all covered transactions made up to within one half hour of each specified reporting time. Packers completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. This information will be published by the Secretary each reporting day not later than 8 a.m. central time, 11 a.m. central time, and 3 p.m. central time, respectively. For barrows and gilts, packers required to report under this rule will also have to report not later than 9 a.m. central time on each reporting day information regarding all barrow and gilts slaughtered during the prior business day. This information will be published by the Secretary each reporting day not later than 10 a.m. central time. In addition, the Secretary will publish a net price distribution for all barrows and gilts slaughtered on the previous day not later than 3 p.m. central time. Section 59.203 details the reporting requirements for sows and boars. Under this rule, each sow and boar packer will report to the Secretary not later than 7 a.m. central time on each reporting day information regarding all sows and boars purchased or priced during the prior business day of the packer. This information will be published by the Secretary each reporting day not later than 8 a.m. central time. Section 59.204 details the requirements for reporting weekly swine information to AMS including what will be reported, when it will be reported, and when it will be

published. On the first reporting day of each week, not later than 4 p.m. central time, packers will be required to report information on noncarcass merit premiums used and paid to producers during the prior slaughter week by category. This information will be published on the first reporting day of each week not later than 5 p.m. central time.

Lamb

Subpart D of part 59 covers the mandatory reporting of lambs. The 1999 Act gives the Secretary the authority to establish a mandatory lamb price reporting program but does not set forth the requirements. AMS will resume the previously established mandatory lamb price reporting program with some modifications as discussed in a previous section in this document.

Section 59.300 provides definitions for terms used throughout subpart D including definitions for packer and for importer, which identifies the entities that will be required to report under this rule. For any calendar year, the term lamb packer includes any Federally inspected lamb processing plant that slaughtered or processed the equivalent of an average of 75,000 head of lambs a year for the immediately preceding 5 calendar years. Additionally, the term includes any processing plant that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant.

For entities that did not slaughter lambs during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

For any calendar year, the term lamb importer includes any importer that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, for any calendar year, the term importer includes any lamb importer that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

For importers of lamb meat products, AMS will annually review import lamb volume data obtained from the United States Bureau of Customs and Border Protection to determine which importers are required to report imported boxed lamb cut sales information under these regulations.

Under this rule, several changes are made to the definitions section that was published in the 2000 final rule. To facilitate the publication of more meaningful information in AMS market reports, a definition of ''yield grade lamb carcass reporting'' is added, which helps clarify the requirements for reporting USDA yield grade information. In addition, the definitions of ''lambs committed'' and ''terms of trade'' are deleted as the requirement to submit the information associated with these definitions has been removed as it is not used by the industry.

Section 59.301 covers the daily reporting requirements for live lamb transactions including what will be reported, when it will be reported, and when it will be published. Lamb plants covered under the rule will report the details of their live lamb purchases once each day to AMS, to include all covered transactions made up to within one half hour of the specified reporting time. Lamb plants completing transactions during the one half hour prior to the previous reporting time will report those transactions at the next prescribed reporting time. The Secretary will publish this information not less than once each day. Section 59.302 covers the same type of information for weekly reporting of live lamb transactions. Packers will be required to report information regarding the prior slaughter week, including among other things the number of lambs purchased through a negotiated purchase that were slaughtered, on the first reporting day of each week to be published by the Secretary on the same day. Finally, section 59.303 covers the reporting requirements for transactions of lamb carcasses and boxed lamb cuts including what will be reported, when it will be reported, and when it will be published. Packers will be required to report details of their sales and purchases of carcass lambs once each day and the Secretary will publish the information once each day. Packers will be required to report details of their sales of boxed lamb cuts, including applicable branded product. This information will be published once each day. These plants will be required to reference the Institutional Meat Purchase Specifications (IMPS) for Fresh Lamb and Mutton Series 200, United States Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program, where applicable.

Importers of boxed lamb cuts will be required to report the required information of their prior week sales of imported boxed lamb cuts on the domestic market, including applicable branded product on the first reporting day of each week and this information will be published by the Secretary on the same day.

OMB Control Numbers

Subpart E of part 59 covers the OMB control number 0581–0186 assigned pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) for the information collection requirements listed in subparts B through D of part 59. All required information must be reported to AMS in a standardized format. The standardized format is embodied in 16 data collection forms that are included in Appendix E at the end of this document. Cattle packers will utilize up to seven of these forms (not all cattle packers must submit all cattle forms) (Appendix A) when reporting information to AMS, including four for daily cattle reporting, two for weekly cattle reporting, and one for daily boxed beef cuts reporting. Swine packers will utilize up to three forms (not all swine packers must submit all swine forms) (Appendix B), two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. Lamb packers will utilize up to six of these forms (not all lamb packers must submit all lamb forms) (Appendix C) when reporting information to AMS, including one for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting, and one for daily lamb carcass reporting. Lamb importers will utilize one of these forms when reporting information to AMS for reporting weekly imported boxed lamb cut sales.

Appendices

The final section of this document contains a series of five appendices. These appendices will not appear in the Code of Federal Regulations. The first three appendices, Appendices A to C, have already been discussed above. They describe the forms that will be used by those required to report information under this program. Appendix D contains guidelines for those entities required to report information on how to use the forms. The actual forms are contained in Appendix E.

Comments and Responses

On August 8, 2007, AMS published a proposed rule and invitation for

comment in the **Federal Register** (72 FR 44672–44722) reestablishing and revising a mandatory program of reporting information regarding the marketing of cattle, swine, lambs, and products of such livestock under the Act. The initial 30-day comment period was set to expire on September 7, 2007. However, on September 5, 2007, AMS announced that the deadline for submitting comments had been extended until September 24, 2007. AMS received 18 comments relevant to the proposed rule. Ten comments were received from organizations representing livestock producers and meat packers and processors in both the United States and overseas; four were received from packer/processors or individuals affiliated with packer/processors; and one each was received from an industry market information provider, a livestock producer, a foreign government, and an individual with no affiliation given. Comments and Agency responses are discussed below.

Provisions of the Act

Summary of Comments: One comment stated that the fine for violations of the Act should be $500,000 per occurrence and that the entire program should be paid for by taxes on the industry.

Agency Response: Section 253(a) of the Act provides that the Secretary may assess a civil penalty of not more than $10,000 per violation. Section 254 of the Act prohibits the Secretary from assessing any type of fee for the submission or reporting of information, for access to published information, or for any other activity required under the Act. Therefore, the comments cannot be addressed through this rulemaking.

General Accountability Office Recommendations

Summary of Comments: Two comments stressed the need for USDA to implement the recommendations of the General Accountability Office (GAO) report ''Livestock Market Reporting: USDA Has Taken Some Steps to Ensure Quality, but Additional Efforts Are Needed'' (GAO–06–202), which was published in December, 2005. One of these comments suggested that the GAO recommendations should be reflected in the proposed rule.

Agency Response: AMS concurs that the recommendations of the GAO report should be implemented. AMS has implemented most of GAO's recommendations, but has not fully implemented all of the recommendations while the program has been operating under a voluntary basis. AMS will complete implementation of the GAO recommendations after this rule has become effective and the mandatory reporting program is again in operation. AMS disagrees with the recommendation to codify the GAO recommendations within this rulemaking. GAO did not recommend any rulemaking or modifications to the rule in effect at the time of its audit of the LMR program. Rather, GAO recommended changes to AMS procedures for operation of the program and to information disseminated by AMS about the program. Thus, AMS is not modifying the proposed rule to codify the GAO recommendations.

General and Miscellaneous Comments

Summary of Comments: Two comments supported the proposed rule generally and specifically mentioned support for proposed revisions and modifications in definitions. The comments noted the need for timely and unbiased market information by market participants, and indicated that implementation of the mandatory program would provide the needed information.

Agency Response: AMS concurs with the comments.

Summary of Comments: One comment encouraged AMS to evaluate the impact on the marketplace of modified or new reports, to consider industry input as modified or new reports are developed, and to allow appropriate time for implementation and testing to assure a smooth transition.

Agency Response: Although the comment does not address the rulemaking directly, it does address the primary output of the rule—the public reports generated from the data submitted under the rule that are disseminated by AMS. AMS concurs that any modified or new AMS reports need to be developed with care, adequate industry input, and appropriate testing.

Summary of Comments: One comment expressed concern that small farms and small farm owners could not survive ''when taxed with the financial and time consumption that this mandatory wave promises.''

Agency Response: Only meat packers, processors, and importers are required to report under this rule. Thus, there is no financial or reporting burden on farms and farm owners. Indeed, the LMR program provides market information to all segments of the industry without any cost for accessing the reports.

Summary of Comments: One comment requested that AMS and the Economic Research Service (ERS) use this rulemaking to reestablish the collection and public reporting of retail meat prices using high quality price scanner data.

Agency Response: The collection and reporting of retail meat prices obtained through price scanner data is a voluntary program and is thus not addressed through this rulemaking. Nonetheless, subsequent to the passage of the Reauthorization Act, ERS has begun reimplementation of the retail meat price scanner data program.

General Provisions—Definitions

Negotiated Purchase and Negotiated Sale

Summary of Comments: Two comments objected to the proposed modifications to the definitions of the terms ''negotiated purchase'' and ''negotiated sale'' by removing the language ''and agreement on a delivery day.'' The comments asserted that there is no consummated transaction between buyer and seller until a price and delivery date are known. The comments also stated that the change would require packers to make several assumptions that may turn out to be inaccurate, would make the AMS audit process more burdensome, and would place unnecessary reprogramming costs on packers. Conversely, one comment agreed with the proposal to drop the phrase ''and agreement on a delivery day'' from the definitions. The comment asserted that the definition from the 2000 final rule resulted from a misinterpretation of the Act and has caused many negotiated sales to be omitted from the data for the day on which the price quote was actually made and errantly placed in the data for the day on which a delivery date is established.

Agency Response: AMS does not agree that the proposed removal of the phrase ''and agreement on a delivery day'' from the definitions of the terms ''negotiated purchase'' and ''negotiated sale'' would introduce the level of uncertainty suggested by the comments. Nonetheless, there is room for ambiguity regarding the criteria for considering a transaction to be consummated, and that agreement on a delivery day may be regarded as one of those criteria. AMS concurs that the proposed modification likely would have increased the burden of this rule compared to no change from the 2000 rule. Because a commensurate benefit in the reporting of market information is not sufficiently clear, AMS reinserts the phrase ''and agreement on a delivery day'' into the definitions of ''negotiated purchase''

and ''negotiated sale.'' For consistency, AMS also adds the same language to the definition of ''negotiated grid purchase.''

Cattle Reporting—General

Summary of Comments: One comment indicated support for areas of expanded reporting for cattle, such as separate reporting for negotiated grid purchases. However, the comment further indicating that there were reduced reporting requirements in a number of areas and that the impact of altering such requirements on users of the information did not appear to have been adequately analyzed. The comment indicated that discounts would be reported for weight, quality, yield, livestock class and breed, dressing percentage, dark cutting, and for all other characteristics, but that no similar change has been consistently incorporated for premiums. In addition, the comment expressed concern regarding the elimination of the requirement for packers to report information for cattle purchased through a formula marketing arrangement and slaughtered the previous week. The comment expressed doubt that there would be sufficient detail for AMS to aggregate the daily information submitted by packers to obtain the information previously required to be reported weekly.

Agency Response: AMS thoroughly considered the impact of all proposed rule changes on the information that would be collected and subsequently summarized and disseminated to the public users of the information. AMS believes that the modifications in reporting requirements for cattle will lead to a net increase in the utility of the information that will be disseminated, thus benefiting all users of the data. In terms of information obtained on premiums and discounts for steers and heifers, the rule requires reporting of any premiums or discounts associated with weight, quality grade, yield grade, or other characteristic. The reporting requirements apply to both premiums and discounts, and AMS disagrees with the comment that changes for reporting of discounts differ from those for premiums. For both premiums and discounts, the phrase ''or other characteristic'' was added the reporting requirements for steers and heifers to ensure that all potential categories of premiums and discounts would be reported. Finally, AMS has evaluated carefully the reporting requirements for cattle purchased through a formula marketing arrangement and is confident that the elimination of the weekly reporting requirement will not impact the Agency's ability to report weekly summaries of information aggregated from daily information. All of the information necessary to produce the weekly reports will be contained in the information that will be included in the daily submissions by packers. Hence, AMS retains these cattle reporting requirements as proposed.

Cattle Reporting—Definitions

Boxed Beef

Summary of Comments: Four comments addressed proposed changes in the definition of ''boxed beef.'' One comment supported the proposed changes generally, but exhorted AMS to maintain consistency with historical data. One comment noted that including frozen product within the definition of ''boxed beef'' would not improve reporting unless the frozen category would be reported separately. One comment noted that removing the age limitations on fresh product would put downward pressure on reported prices of boxed beef. Two comments generally supported the elimination of age restrictions in the definition of boxed beef, but questioned how AMS would identify and handle discounted products so as not to distort reported market prices and information.

Agency Response: AMS concurs with the sense of the comments that the proposed changes in the definition of boxed beef are generally favorable, but need to be implemented with caution. In particular, AMS concurs that there needs to be a means for distinguishing fresh product transactions that may be discounted or priced differently due to age of the product. Therefore, AMS adds a third code to the ''Refrigeration'' category, which is line 16 on the Boxed Beef Daily Report LS–126. The proposed rule include two categories, namely, ''fresh'' and ''frozen.'' The form is modified to include three categories of ''Refrigeration''—(1) Fresh, 14 days or less; (2) Frozen; and (3) Fresh, over 14 days. Splitting the fresh category into two product age groups will provide a means for identifying product that may be discounted due to potential shelf life limitations.

Carlot-Based

Summary of Comments: Two comments expressed concern regarding the definition of ''carlot-based'' for cow and bull beef to mean any transaction between a buyer and seller consisting of 5,000 pounds or more of one or more individual items. The comments indicated that certain cuts may be trading in high volume, but in lots of less than 5,000 pounds, and thus precluding the reporting of these often high-value items.

Agency Response: AMS concurs with the comments that a minimum threshold of 5,000 pounds for reporting of cow and bull boxed beef transactions would preclude the reporting of important high-value items. To increase the range of items for which sufficient information will be submitted for reporting, AMS lowers the minimum threshold for reporting of boxed cow and bull beef from 5,000 to 2,000 pounds. AMS believes that this minimum threshold will enable valid, accurate market information to be reported on high-value boxed cow beef items with comparatively little increase in the reporting burden on subject packers.

Terms of Trade

Summary of Comments: One comment supported the change in the application of ''Terms of trade'' to steer and heifer transactions only to coincide with the separation of reporting requirements for steers and heifers versus cows and bulls. The comment also supported the requirement to distinguish between negotiated transactions that are scheduled to be delivered for slaughter within 14 days versus those that are to be delivered in more than 14 days but fewer than 30 days. Another comment noted that the requirement to report on steers and heifers to be delivered between 14 days and 30 days would provide additional information regarding those transactions, while the elimination of the reporting requirement for cattle scheduled to be delivered within 7 days and between 7 and 14 days would result in a loss of information.

Agency Response: AMS recognizes that there is a tradeoff involved in revising the reporting requirement for the delivery schedule for steers and heifers. The gain in information on negotiated purchases scheduled for delivery between 14 and 30 days must be weighed against the loss of information in terms of detail on purchases scheduled for delivery within 14 days because the data would no longer be obtained to distinguish between purchases with delivery scheduled within 7 days or less versus 8 to 14 days. Past experience with the LMR program has shown that the percentage of transactions falling into the 8 to 14 day delivery window is small and no price difference has been found for those purchases versus those scheduled for delivery within 7 days. However, no information is available on purchases with deliveries scheduled between 14 and 30 days, as that

information was not previously required. Therefore, AMS concludes that the potential benefit of obtaining information on transactions with extended delivery terms exceeds the potential loss of information on the breakdown regarding transactions scheduled within 14 days.

General Provisions—Recordkeeping

Summary of Comments: One comment supported the modification in the recordkeeping requirements for lamb importers to maintain the time of day of a sale.

Agency Response: AMS concurs with the comment. Because lamb importers are required to report only weekly, the date that the sale occurred is sufficient to permit a transaction to be verified.

Cattle Reporting—Daily Reporting

Summary of Comments: Two comments suggested changing the current method of collecting information on delivered cattle. The comments stated that the current method of collecting this information provides little value and is redundant and burdensome to packers. The comments suggested collecting the information for delivered cattle in a manner similar to prior day reporting for swine.

Agency Response: The Act provides for only reporting twice per day regarding cattle delivered to the packer and does not provide for a prior day report as is the case for swine. Therefore, AMS does not adopt the recommendation to require prior day reporting for all cattle.

Summary of Comments: Two comments support the proposed reduction in reporting requirements for cow and bull packers and noted that the adjustment would not reduce the quality or quantity of important data. Conversely, another comment asserted that the only justification for the proposed change was to reduce reporting requirements for cow and bull packers and that the proposed rule did not analyze the impact of these changes on producers who sell such animals.

Agency Response: AMS concurs with the comments that the changes to cow and bull reporting requirements will reduce the burden on reporting plants without adversely affecting the value of the information available to be disseminated. AMS disagrees with the comment that the impact of the changes was not analyzed. In drafting the proposed rule, AMS carefully considered the organization of the industry and past experience with the information collected under the LMR program. Deliveries of cows and bulls to packing plants are overwhelmingly cull animals that are neither committed nor scheduled in advance of delivery. Conversely, steers and heifers are placed on feed with the intention of reaching finished weights and grades within marketing windows of a few weeks. Previous experience with the LMR program has proven that the committed and delivered reporting required for cows and bulls created a substantial reporting burden while resulting in little useful information. For the most part, these animals are delivered to the plant in small lots of one or a few head without prior scheduling and thus are both committed and delivered simultaneously. However, plants were required to report these lots twice simultaneously (once as committed and once as delivered) under the previous rule that did not distinguish between reporting requirements for cows and bulls versus that for steers and heifers. Separating the reporting requirements for cows and bulls versus steers and heifers enabled AMS to add the reporting form LS–131 (Cow/Bull Plant Delivered Bids) to collect more detailed information from cow and bull packers once per day. AMS believes that there will be a net gain in the utility of the information collected and ultimately disseminating regarding cow and bull purchases by packers. Thus, AMS retains the requirements of the proposed rule for cow and bull reporting.

Summary of Comments: One comment addressed the manner in which cattle market information obtained by AMS is summarized for public reporting. Specifically, the comment noted that some companies report all cattle purchases, including live purchases, FOB the feedyard and FOB the packing plant, but both are not included in reporting by AMS. The comment recommended reporting these transactions. The comment also recommended reporting cattle on a ''clean up'' basis, using premiums and discounts to ''clean up'' each lot to provide better information regarding the real value of each lot.

Agency Response: AMS appreciates the recommendations on AMS reporting of information required under this rule. However, the recommendations do not address the regulatory requirements and thus entail no changes to the proposed rule.

Cattle Reporting—Weekly Reporting

Summary of Comments: One comment supported the addition of the negotiated grid purchase category to the purchase types. The comment also deemed as necessary the requirement to report the delivery year in addition to the basis-level month for cattle purchased through forward contracts. Conversely, another comment asserted that the addition of the field ''delivery year'' would impose additional and unnecessary programming costs with little or no attendant benefit because few such transactions take place annually and those that occur are not material to the market.

Agency Response: AMS agrees that there are relatively few transactions that occur beyond the immediate forward contracting year, but such transactions nonetheless do occur. AMS disagrees that such transactions are not material to the market. The concern is that without data on the delivery year, there is no way to distinguish between a forward contract for delivery in, say, 3 months versus 15 months. Aggregating information on forward contracts scheduled for delivery 12 months apart would distort market information and could result in misleading signals with material consequences for the market. Thus, AMS retains the requirement to report the delivery year for forward contract purchases.

Swine Reporting—General

Summary of Comments: One comment supported all of the changes to swine reporting, noting that the changes should enable the Agency to publish more meaningful reports while reducing the burden on packers.

Agency Response: AMS concurs with the comment.

Summary of Comments: One comment noted a reference to section 59.303 in the discussion of the key components of the proposed rule (72 FR 44676), and questioned whether the reference should be to section 59.203.

Agency Response: The comment indeed identified a typographical error, which has been corrected in this notice.

Swine Reporting—Definitions

Packer

Summary of Comments: One comment suggested setting the threshold number for reporting on sows at 100,000 head per year because the sausage industry is comprised of many small packers.

Agency Response: The size thresholds for a ''packer'' are defined by the Act. Thus, AMS retains the statutory requirements in the definition of a swine ''packer.''

Inferior Hogs

Summary of Comments: One comment supported the proposal to define ''inferior hogs'' and to allow packers to exclude these animals from

data submitted to AMS. The comment asserted that packers submitting data would be in the best position to know which animals are ''inferior,'' and that the modification would not be detrimental to producers and would add transparency to the system. The comment also noted inconsistency in references to ''inferior swine'' as opposed to the term ''inferior hogs.''

Agency Response: AMS concurs with the comment. For consistency, the term ''inferior hogs'' is replaced by the term ''inferior swine'' throughout.

Swine Reporting—Daily Reporting

Summary of Comments: One comment strongly supported the publication of a net price distribution report and encouraged AMS to work closely with the industry to determine the most effective reporting format. The comment noted that the Act grants the Secretary authority to make ''reasonable adjustments'' to submitted data to prevent harm to producers, packers, and other market participants. The comment noted that the Act requires AMS to publish a net price distribution report for all barrows and gilts slaughtered on the previous day not later than 3 p.m. Central time. Nonetheless, the comment encouraged AMS to publish the distribution at 10 a.m. Central time with the prior day slaughter report.

Agency Response: AMS concurs with the suggestion to work with industry to develop the most effective reporting format for net price distributions for slaughtered barrows and gilts and explore the feasibility of publishing the report earlier in the day. However, no changes are made as a result of this comment to the proposed rule.

Summary of Comments: One comment regarding swine reporting suggested that multiple daily reports are not warranted and that a daily report from each packer would accomplish the desired results.

Agency Response: Reporting requirements for swine are specified in the Act. Therefore, AMS retains the reporting requirements of the proposed rule.

Summary of Comments: One comment noted that current morning and afternoon reports for swine are based on State of origin, while prior day reports are based on delivered location. The comment suggested that the prior day report should be based on State of origin for consistency.

Agency Response: AMS will obtain State of origin information in the prior day report from packers, and thus will have the information necessary to report prior day information by State of origin.

Summary of Comments: One comment observed that the daily reporting requirements for sows and boars appear to be reasonable, but questioned the 7 a.m. Central time reporting deadline. The comment noted that the Reauthorization Act requires that sow and boar information be reported by packers not later than 9:30 a.m. Central time, and urged that the deadline in the rule be set to no later than 9 a.m. and preferably 9:30 a.m. as the statute reads. The comment noted that the 8 a.m. Central publication time for AMS would need to be changed if the submission deadline were to be changed.

Agency Response: AMS acknowledges that a later reporting deadline is permissible under the Reauthorization Act. However, AMS believes that the proposed 7 a.m. reporting deadline will not be unduly burdensome to sow and boar packers. Previously, many sow and boar packers submitted prior day information at the close of business on the ''prior'' day, rather than submitting the data the following morning. As such, a 7 a.m. reporting time imposes no additional reporting burden on these packers.

Summary of Comments: One comment urged USDA to comply fully with the Reauthorizations Act's requirements for electronic submission of sow and boar information through an Internet Web site or equivalent electronic means. The comment noted that sow and boar packers are relatively small firms that cannot absorb significant compliance costs.

Agency Response: Under this program, firms will be able to submit data either through electronic data transfer or through a web interface.

Lamb Reporting

Summary of Comments: One comment noted that lamb carcass price information is used by all segments of the domestic lamb business. The comment recommended that audits be conducted not only by reviewing seller invoices but also by calling buyers, that the minimum for carlot trades be set at 200 carcasses, and that USDA call both sellers and buyers on a weekly basis to ensure that reporting does not include special programs. The comment also questioned whether inter-company trades should be used.

Agency Response: With regard to verification of sales of lamb carcasses, AMS will obtain information only from those entities required to report. AMS conducts thorough audits of all the entities required to report, and thus there is no need to confirm selling information with buyers. The rule does not set a minimum threshold for carlot trades of carcasses, just as there is no minimum threshold set for live animal transactions. A threshold of 200 carcasses likely would exclude smaller lots that represent a meaningful segment of the carcass trade. The comment questioning whether to use inter-company trades is unclear. The only information that will be collected and subsequently reported by AMS will be inter-company (that is, company-to-company) trades. Perhaps the comment intended to refer to intra-company trades, but such transactions internal to a single firm will not be submitted under the LMR program.

Summary of Comments: Three comments objected to the reporting requirements for imported lamb out of principle and on the basis that the information would have no correlation with U.S. domestic slaughter lamb prices and would increase costs of international trade. Conversely, three comments indicated support for the lamb reporting requirements. Of these, one comment specifically singled out support for the mandatory reporting requirements for lamb. Another comment supported the proposed rule generally and specifically cited the need for weekly data generated from lamb reporting for operation of a new livestock risk protection insurance product. Finally, one of the comments supported the modifications in the proposed rule for lamb packers, indicating that requiring lamb packers to report on carcass purchases in addition to the previous requirement to report on carcass sales would enable AMS to make more complete and meaningful information available in its reports.

Agency Response: AMS disagrees that there is no relationship between values for imported boxed lamb cuts and U.S. domestic slaughter lamb prices. First, U.S. lamb producers are not the only intended beneficiaries of this market information program. All market participants from producers through buyers and final customers benefit from more transparent market information, including information not only on prices but also on quantities and characteristics of products being traded. Because imported lamb now accounts for more than half of the U.S. domestic supply of lamb meat, information on that segment of the market is critical regardless of whether domestic and imported product prices are highly correlated or not.

AMS acknowledges that there will be costs for lamb importers that are required to report, but there likewise will be costs for domestic lamb

suppliers. Indeed, costs for domestic lamb processors are estimated to be higher than that for lamb importers, as domestic lamb carcass and boxed lamb information is required to be reported daily while imported boxed lamb information is required to be reported weekly. Therefore, the rule does not impose a disproportionate burden on lamb importers versus domestic lamb suppliers.

AMS concurs with the comment that the rule needs to be implemented as quickly as possible to provide vital market information to the lamb industry. AMS also concurs with the comment that the modified lamb reporting requirements will enable more complete and meaningful market reports to be published. Accordingly, AMS retains the lamb reporting requirements as set forth in the proposed rule.

Summary of Comments: Four comments raised concerns about the confidentiality of information submitted by lamb importers. The comments noted the relatively small number and wide size distribution of lamb importers that would be required to report. The comments argued that a competitor knowing its own market share would be well-positioned to determine the price of the major market shareholder.

Agency Response: AMS agrees that confidentiality of proprietary business information is of utmost concern in the operation of the mandatory reporting program. Section 251(a) of the Act directs the Secretary to ''make available to the public information * * * in a manner that ensures that confidentiality is preserved regarding—(1) the identity of persons * * * and (2) proprietary business information.'' Thus, AMS implemented the ''3/70/20'' confidentiality guideline to enable the Agency to issue more frequent and more complete reports on livestock and meat, providing all segments of the livestock and meat industries with information on which to base market decisions, while preserving the confidentiality of proprietary business transactions. The guideline consists of three requirements: (1) At least three reporting entities need to provide data at least 50 percent of the time over the most recent 60-day time period, (2) no single reporting entity may provide more than 70 percent of the data for a report over the most recent 60-day time period, and (3) no single reporting entity may be the sole reporting entity for an individual report more than 20 percent of the time over the most recent 60-day time period. AMS is confident that application of these guidelines protects the confidentiality of information disseminated under the LMR program, and thus maintains the reporting requirements for lamb importers as proposed.

Summary of Comments: Two comments expressed concern about possible requirements for reporting country of origin for imported lamb. The comments stated that reporting of country of origin could increase the risk of disclosure of individual companies' pricing information. One of the comments noted that domestic boxed lamb data is not subject to any comparable regional classification, while the other comment supported the reporting requirement that identifies product as domestic or imported only.

Agency Response: Given the small number of lamb importers, AMS acknowledges the concern regarding potential disclosure of proprietary business information in relation to the country of origin of imported lamb. However, AMS has guidelines and procedures in place to ensure that confidential information is not disclosed. As noted by one of the comments, the rule does not require importers to submit the country of origin of imported lamb, but only to designate whether lamb is sourced domestically or is imported. On the other hand, AMS recognizes the product description for lamb cuts often reveals the country of origin of the product. Accurate product information is necessary for the data to be aggregated and subsequently reported by AMS in sensible and meaningful ways. AMS is cognizant of the confidentiality concerns particular to imported lamb and will be especially vigilant in applying its confidentiality guidelines before publicly reporting lamb market information. If submitted data do not meet the confidentiality guidelines, then the data will not be disclosed until sufficient information is obtained to meet the guidelines. Thus, AMS retains the requirements for reporting of imported lamb as proposed.

Summary of Comments: Two comments stated the economic and time burden on lamb importers is significantly higher than estimated in the proposed rule. One of the comments indicated that the startup/maintenance cost estimate of $672 per respondent was understated by an order of magnitude. The other comment stated that lamb importers are relatively small, and that costs of compliance are higher for small companies due to lower staff numbers and higher overhead costs compared to larger businesses. The comment requested that USDA minimize the time and resources required to collect data from lamb importers wherever possible.

Agency Response: The comments asserted that costs of compliance for lamb importers are higher than estimated by AMS, but did not provide sufficient detail to permit the validity of the assertions to be evaluated. AMS concurs with the comment that the Agency needs to minimize the time and resources necessary to collect data wherever possible. In developing the proposed rule, AMS has sought to minimize the compliance burden consistent with the Agency's ability to collect and disseminate useful information of value to industry participants, including those required to submit data.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 259 of the 1999 Act prohibits States or political subdivisions of a State to impose any requirement that is in addition to, or inconsistent with, any requirement of the 1999 Act with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products. In addition, the 1999 Act does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act of 1921 (7 U.S.C. 181 et seq.); administer, enforce, or collect voluntary reports under the 1999 Act or any other law; or access documentary evidence as provided under Sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons who are employees of the entities that are subject to this regulation. This rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule will not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal Statute to preempt State law only when the statute contains an express preemption provision. This rule is required by the 1999 Act. Section 259 of the 1999 Act, Federal Preemption, states, ''In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products.''

Prior to the passage of the 1999 Act, several States enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular State. However, since the National program was implemented on April 2, 2001, these State programs are no longer in effect. Therefore, there are no Federalism implications associated with this rulemaking.

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, this regulatory analysis contains a statement of the need for the rule, an examination of alternative approaches, and an analysis of benefits and costs.

Executive Summary

This rule implements the Reauthorization Act, which reauthorized the 1999 Act and amended the swine reporting provisions of that Act. As stated in the 1999 Act, the purpose of the Act is to establish a program of information regarding the marketing of cattle, swine, lambs, and the products of such livestock that provides information that can be readily understood by producers; improves the price and supply reporting services of the Department of Agriculture; and encourages competition in the marketplace for livestock and livestock products. (7 U.S.C. 1635)

This rule facilitates open, transparent price discovery and provides all market participants, both large and small, with comparable levels of market information. The rule is expected to reduce the time and resources that market participants would otherwise expend to assess current market conditions, reduce risk and uncertainty, and contribute to considerations of fairness and equity to all participants in the marketplace. However, these anticipated benefits are difficult to measure and quantify.

This rule is strictly an informational measure and does not impose any restrictions on the form, timing, or location of procurement and sales arrangements in which subject packers and importers may engage. Therefore, costs of the rule are simply the costs associated with system development and maintenance, data submission, and recordkeeping activities of the packers and importers required to report information under this rule, plus the costs to the Federal government for operation of the program. However, most of the entities that will be required to report under this rule already reported information prior to expiration of the 1999 Act on September 30, 2005, and have since continued to do so voluntarily. As a result, incremental costs for implementation of this rule are negligible relative to total costs associated with the program. Moreover, total costs estimated for this rule are lower than costs estimated in the 2000 final rule expressed in comparable current (May 2007) dollar values.

Total costs to reporting packers and importers are estimated at approximately $724,000 per year, while costs to the Federal government for operation of the program total $6.3 million per year. By comparison, the total costs to reporting packers and importers in the 2000 final rule (65 FR 75464) were estimated at $836,000 per year in current dollars, while costs to the Federal government in FY 2001 were estimated at $6.9 million in current dollars. In current dollar terms, the rule represents a reduction of $112,000 in estimated annual costs to reporting packers and importers, and a reduction of $600,000 in estimated annual costs to the Federal government.

For both respondents and the Federal government, total costs for the rule are estimated at approximately $7.0 million annually, while total costs for the 2000 final rule were estimated at $7.8 million annually in current dollars. Because the Act expires on September 30, 2010, the rule is assumed to have a life cycle of 3 years. At a real discount rate of 3 percent, the discounted present value of the total private and public sector costs for the rule is estimated at almost $20.5 million for the duration of the program, compared to over $22.6 million for the 2000 final rule (expressed in current dollars over a 3-year life cycle). This represents a reduction of more than $2.1 million over the life of the rule in comparison to the 2000 final rule. At a real discount rate of 7 percent, the discounted present value of the total private and public sector costs for the rule is estimated at $19.7 million for the duration of the program, compared to $21.8 million for the 2000 final rule (expressed in current dollars over a 3-year life cycle). This represents a reduction of $2.1 million over the life of the rule in comparison to the 2000 final rule.

Need for Federal Regulatory Action

This rule implements the Reauthorization Act, which reauthorized the 1999 Act and amended the swine reporting provisions of that Act. The 1999 Act first became law on October 22, 1999, as an amendment to the Agricultural Marketing Act of 1946. The first reports disseminated under LMR were issued in April 2001. In December 2004, the 1999 Act was reauthorized through September 30, 2005. The legislative authority lapsed until October 5, 2006, when it was reauthorized through September 30, 2010, with the Reauthorization Act. During the two periods of lapsed mandatory reporting authority, most firms that would have been required to report information under the requirements of LMR continued to report the same information voluntarily. As a result, AMS continued to release most of the reports that would have been released under the mandatory reporting program.

The 1999 Act as amended by the Reauthorization Act directs the Department of Agriculture (USDA) ''to establish a program of information regarding the marketing of cattle, swine, lambs, and products of such livestock.'' This Act contains specific requirements that provide limited discretionary authority for regulatory implementation of many of the law's provisions. As a result, many of the provisions within this rule represent straightforward implementation of the requirements of this Act.

As stated in the 1999 Act, the purpose of the statute is to establish a program that—

(1) Provides information that can be readily understood by producers, packers, and other market participants, including information with respect to the pricing, contracting for purchase, and supply and demand conditions for

livestock, livestock production, and livestock products;

(2) Improves the price and supply reporting services of the Department of Agriculture; and

(3) Encourages competition in the marketplace for livestock and livestock products. (7 U.S.C. 1635)

Increasingly, transactions between livestock producers and meat packers occur by way of private negotiations rather than through public trades. Compared to prices established in public markets, prices established in private transactions are difficult to observe, collect, summarize, and disseminate. Data reported by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA) show that of total cattle purchases by reporting packers, the share purchased in public markets declined from 30.2 percent in 1977 to 12.0 percent in 2004.[1] For hogs, the decline was larger, dropping from 27.5 percent in 1977 to just 1.7 percent in 2004. For sheep and lambs, public market purchases declined from 23.4 percent to 8.3 percent of total purchases by reporting packers over the same period.

Open, transparent price discovery provides all market participants with comparable levels of market information, providing each economic agent with similar information. The decline in public market trading of livestock over the years led to increasingly opaque price discovery in these markets. As stated in the 1999 Act, mandatory livestock reporting provides a means of providing information to market participants and improving the price and supply reporting services of USDA.

Similar to many sectors of the economy, both the livestock production and meat packing industries have undergone substantial consolidation during the past few decades. However, the rate and extent of the consolidation among meat packers has been greater compared to livestock producers.

The four-firm concentration ratio for steer and heifer slaughter increased from 35.7 percent in 1980 to 81.1 percent in 2004.[2] Over the same period, the four-firm concentration ratio for cow and bull slaughter increased from 9.7 percent to 48.0 percent. Hog slaughter concentration by the top four firms increased from 33.6 percent to 61.3 percent over the same period, while sheep and lamb slaughter concentration increased from 55.9 percent to 66.9 percent. Between 1986 and 2005, the number of bonded packers reporting to GIPSA declined from 691 to 312.

According to the National Agricultural Statistics Service (NASS), the number of cattle operations in the United States declined from 1.6 million in 1980 to 983,000 in 2005. Over the same time period, the number of hog and pig operations declined from 667,000 to 67,000, while the number of sheep and lamb operations declined from 120,000 to 68,000. Thus, consolidation occurred among livestock production operations, but the number of livestock operations still far exceeds the number of livestock packers.

For slaughter livestock, the predominant marketing relationship is characterized by comparatively small livestock operations dealing with large meat packing firms. In addition, markets for slaughter livestock are local or regional in geographic scope. The distances over which it is economically rational to transport slaughter livestock is dictated by differences in relative prices for livestock in different geographic areas versus shipping costs. Shipping costs include not only costs of trucking equipment, labor, fuel, insurance and other out-of-pocket expenses, but also include additional stress and weight shrink of animals hauled for greater distances and longer periods of time. In these regionalized trade areas, there typically are relatively large numbers of livestock operations, but only a handful of packers for any given type of slaughter animal. As a result, relatively few packers engage in many, frequent negotiations and completed transactions with a large number of producers. In contrast, even larger livestock operations typically engage in negotiations with a few packers within their economically viable trade area and may only complete transactions with one or two packers. Smaller livestock operations may only engage in sales transactions a few times per year, while packers procure livestock to run their plants every business day of the year. The 1999 Act and the Reauthorization Act were passed by Congress in light of these structural and organizational conditions present in the livestock and meat industries.

The rule does not constitute economic regulation of the permissible business practices in which meat packers and importers may engage. Affected entities are free to conduct their businesses in any manner consistent with other relevant Federal, State, and local laws and regulations. The rule only requires that the subject entities disclose information about their livestock purchases and meat sales to AMS, which will then process, summarize, and disseminate the information. The identity of persons, including parties to a contract, and proprietary business information will be kept confidential in accordance with the 1999 Act.

Alternative Regulatory Approaches

AMS believes that the rule represents the most cost effective means of fulfilling the statutory mandate of the 1999 Act as amended by the Reauthorization Act. While this Act provides some discretionary authority for operation of the program, many of the definitions, reporting times, and disclosure requirements are specified in the law itself. Since the program was first implemented in April 2001, experience has proven that electronic reporting is the least-cost means for both subject entities and AMS to comply with the requirements of the Reauthorization Act. During the periods in which mandatory reporting requirements lapsed (including October 2005 through the present), entities that continued to report voluntarily did so through electronic submission of information in the same manner as had be required under mandatory reporting authority.

The LMR system provides two methods for firms to transmit livestock mandatory reporting data to the system: A Web interface and electronic data transfer. For most firms, electronic data transfer provides the most efficient mechanism for transferring required data. USDA provides a software utility for users to transfer comma-delimited ASCII files directly to the LMR system. The comma-delimited files can be generated electronically from livestock purchase and meat sales records. For smaller operations with relatively few transactions, the Web interface may be more efficient than electronic data transfer. The Web interface module is available over the Internet using a Web browser, but requires more manual inputting of data compared to the electronic data transfer option. Nonetheless, the Web interface option provides smaller operations with a mechanism for submitting the required data without the need to incur fixed costs of developing a software application to prepare data for electronic data transfer. Historically, about 90 percent of plants and importers have submitted data electronically, with the remaining 10 percent of respondents submitting data through the Web interface.

[1] GIPSA, USDA. Packers and Stockyards Statistical Report, 2005 Reporting Year. GIPSA SR–01–1, February 2007.

[2] Ibid.

Analysis of Benefits and Costs

The baseline for this analysis is the LMR program as it currently operates. Specifically, the baseline is the LMR program as directed by the 1999 Act and implemented by the 2000 final rule. Although the 2000 final rule expired when the 1999 Act expired on September 30, 2005, the current voluntary participation by most packers allows the LMR program to function nearly identically to how it operated under the mandatory authority of the 1999 Act.

Despite the fundamental role played by market information for private and public decision-making, research, outlook, and analysis, there is comparatively little empirical research on market reporting in and of itself. Likewise, there is a paucity of quantitative research regarding the benefits and costs of LMR specifically.

Perry, et al. note that some local and regional market news reports were no longer available after the implementation of LMR because of the program's confidentiality restrictions.[3] However, the authors also conclude that far more information on formula transactions became available, allowing for comparisons with negotiated transactions that had not been possible before. Formula prices for cattle were found to closely mirror prices for negotiated purchases. The study found that volatility in weekly reported cattle prices rose after implementation of LMR, but was unable to determine whether the change resulted from the change in the reporting system or from changes in cattle markets. The authors observed that the trend toward formula pricing arrangements in cattle markets slowed after LMR was implemented, and cautiously speculated that the program may have played a role in stabilizing the volume of negotiated transactions.

Ward provides perhaps the most comprehensive review and assessment of research relating to LMR.[4] Ward notes that satisfaction or dissatisfaction with mandatory reporting depends on individuals' expectations regarding what the 1999 Act would achieve or the problems that it would address. Ward concludes that mandatory reporting provides more information in some areas than what was previously available and has increased transparency and price reporting accuracy. He suggests that satisfaction with the program likely has increased due to increased familiarity with the data and information available through mandatory reporting and enhanced confidence in reported prices.

Benefits. One of the fundamental conditions underlying the theory of competitive markets is that market participants possess relevant information necessary to make the correct economic decisions. This rule seeks to ensure market transparency by providing current and potential participants in livestock and meat markets with timely, accurate, and comprehensive information about prices paid and received for livestock and meat products. Market transparency facilitates market efficiency by reducing search costs for market participants and by reducing risk and uncertainty. Widely available market information reduces the time and resources that market participants would otherwise expend to assess current market conditions. With reliable market information, market participants can make informed marketing decisions and thus reduce exposure to risks associated with buying or selling at prices inconsistent with the prevailing market norms. Unrestricted availability of market information may also contribute to considerations of equity and fairness in the marketplace. Unrestricted dissemination of market news reporting provides all market participants with comparable access to current market information regardless of the size or financial resources of their respective operations.

Livestock mandatory reporting under this rule will provide comprehensive information on slaughter livestock, beef, and lamb meat prices. Using the information submitted by packers under the provisions of the 1999 Act, AMS publishes over 100 daily, weekly, and monthly reports covering market transactions for fed cattle, swine, lamb, beef, and lamb meat. Based on the information available, AMS estimates that reports issued under LMR cover approximately 95 percent of slaughter hogs, 77 percent of the slaughter cattle, 60 percent of slaughter sheep, 41 percent of boxed lamb, 26 percent of the carcass lamb, and 93 percent of boxed beef. AMS market reports are utilized by producers and others in the marketing chain to formulate contracts and make marketing decisions, and by Government agencies to make policy decisions, address trade disputes, and in a variety of other functions. For example, AMS Market News data played a key role in the analysis conducted by the U.S. International Trade Commission as part of its investigation of live swine imports from Canada, which was released in April 2005.

Despite the fundamental role played by price information in underpinning fair, competitive, and efficient markets, quantifying the impact of mandatory livestock reporting is difficult. There is a considerable economic literature addressing the value of information, but little research on the economics of market reporting in and of itself.[5] Research mainly has addressed the accuracy and adequacy of price reporting, but no published works have been identified that monetize the benefits of mandatory reporting programs such as that contained in this rule.

Costs. This rule is strictly an informational measure and does not impose any restrictions on the form, timing, or location of procurement and sales arrangements in which subject packers and importers may engage. The rule places no additional limitations on current or future business relationships into which affected firms may enter, although other local, State, and Federal laws and regulations regarding such relationships continue to apply. Therefore, costs of the rule are simply the costs associated with system development and maintenance, data submission, and recordkeeping activities of the packers and importers that will be required to report information under this rule, plus the costs to the Federal government for operation of the program.

Although this rule is not identical to the 2000 final rule, most of the regulatory provisions are the same or only slightly modified from that rule. As such, costs for firms subject to the rule will be similar to costs required to comply with the 2000 final rule. Hence, the methods for developing the cost estimates presented in this impact analysis largely follow from the methods used in developing the cost estimates contained in the final impact analysis published in the **Federal Register** along with the 2000 final rule. As applicable, estimates of employer costs for employee compensation are updated using recent statistics from the Bureau of Labor Statistics.

For reporting packers and importers, there are essentially three phases required to comply with this rule:

[3] Perry, J., J. MacDonald, K. Nelson, W. Hahn, C. Arnade, and G. Plato. ''Did the Mandatory Requirement Aid the Market? Impact of the Livestock Mandatory Reporting Act.'' Economic Research Service, U.S. Department of Agriculture, LDP–M–135–01, September 2005.

[4] Ward, C.E. ''An Assessment of the Livestock Mandatory Reporting Act.'' Paper presented at the NCCC–134 Conference on Applied Commodity Price Analysis, Forecasting, and Market Risk Management, St. Louis, Missouri, April 17–18, 2006.

[5] Ward, *op. cit.*

(1) Development or modification of a system for electronic reporting of data and periodic system maintenance, updating, and compliance; (2) ongoing submission of required data; and (3) maintenance of records for a period of 2 years following submission of data to AMS. AMS estimates that most costs associated with this rule will result from costs associated with ongoing submission of required data. As explained below, AMS expects that there will be relatively low costs imposed on reporting packers and importers for program startup, systems maintenance and updating, and records maintenance.

AMS estimates that approximately 65 packers and importers, representing approximately 115 plants or establishments, will be required to submit information under this rule. However, most of these firms already have established systems for reporting information to AMS because they were subject to the requirements of the program when it was in effect from 2001 through 2005. Moreover, most firms have continued to report data voluntarily to AMS during the period that the Act expired on September 30, 2005, to the present. These firms will need to modify their current data reporting systems to be compatible with the requirements of the rule.

AMS estimates that there will be an average of about three additional packers and importers annually that will reach the size thresholds for reporting under this rule, but that had not previously reported under the requirements of the Act. Some of these firms will be new entrants to the industry and others will have increased their slaughter volume to the level at which they are required to submit data under the requirements of the law and this rule. These firms will need to develop an electronic interface to translate the information from their existing computerized recordkeeping systems into the standardized format required for automated submission of the data to AMS. Firms with existing reporting systems will need to modify the electronic interface to accommodate changes in reporting requirements. AMS estimates that 15 hours of development and computer programming time per plant will be required to develop or modify the interface.

Electronic data transmission of information is accomplished using an interface with an existing electronic recordkeeping system. In most cases, the information packers and importers are required to report already exists in internal computerized recordkeeping systems. Packers and importers will provide for the translation of the information from their existing electronic recordkeeping system into the required AMS standardized format. Once accomplished, the information will be electronically transmitted to AMS where it will be automatically loaded into an AMS database. AMS estimates that the development and computer programming to establish and maintain this interface will require an industry average of 15 hours per respondent per year. AMS estimates the employer costs for employee total compensation per hour to average $44.82, which is the average for all civilian management, professional, and related occupations for the second quarter of 2006 according to the Bureau of Labor Statistics. The management, professional, related occupations category includes the managers who will oversee development and maintenance of the electronic interface and the computer systems and programming personnel who will actually implement and maintain the interface. With 15 hours of time, AMS estimates the total cost, on average, for the electronic interface development and maintenance to be $672.30 per year.

ELECTRONIC SUBMISSION DEVELOPMENT AND ANNUAL SYSTEM MAINTENANCE COST PER RESPONDENT

Hours to develop and maintain interface	15
Employee compensation cost per hour	× $44.82
Total annual cost per respondent	$672.30

* Hours required annually to develop and maintain electronic interface between existing company electronic recordkeeping system and AMS required electronic submission format.

Additionally, AMS estimates the annual cost per respondent for the storage of the electronic data files submitted to AMS in compliance with the reporting provisions of this rule to be $1,923.10 (see Paperwork Reduction Act section for a full discussion). This estimate includes the cost of electronic data storage media, backup electronic data storage media, and backup software required to maintain an estimated annual electronic recordkeeping and backup burden of 20 megabytes, on average, per respondent. In addition, this estimate includes the cost per employee to maintain such records which is estimated to average 70 hours per year at $21.33 per hour for a total employee compensation component cost of $1,493.10 per year. For this record maintenance activity, AMS estimates the employer costs for employee total compensation per hour to average $21.33, which is the average for all civilian office and administrative support occupations for the second quarter of 2006 according to data from the Bureau of Labor Statistics.

ANNUAL RECORDKEEPING COST PER RESPONDENT

Labor hours per year	70
Labor cost per hour	× $21.33
Sub-total labor cost per year	$1,493.10
Electronic storage cost*	+ $430.00
Total Recordkeeping Cost	$1,923.10

* Includes cost of hard electronic storage (estimated to average 20 megabytes/year), backup media, backup drive, and backup software.

In this rule, information collection requirements include the submission of the required information on a daily and weekly basis in the standard format provided in the following forms: (1) Live Cattle Daily Report (Current Established Prices), (2) Live Cattle Daily Report (Committed and Delivered Cattle), (3) Live Cattle Weekly Report, (4) Cattle Premiums and Discounts Weekly Report, (5) Cow/Bull Plant Delivered Bids (Dressed Basis), (6) Live Cow/Bull Daily Purchase Report, (7) Boxed Beef Daily Report, (8) Swine Prior Day Report, (9) Swine Daily Report, (10) Swine Noncarcass Merit Premium Weekly Report, (11) Live Lamb Daily Report (Current Established Prices), (12) Live Lamb Weekly Report, (13) Live Lamb Weekly Report (Formula Purchases), (14) Lamb Premiums and Discounts Weekly Report, (15) Boxed Lamb Daily Report, and (16) Lamb Carcass Report. Copies of these 16 forms are included in Appendices at the end of this rule.

Cattle packers will utilize up to seven of these forms (Appendix A) when reporting information to AMS including two for daily cattle reporting, three for weekly cattle reporting, and one for daily boxed beef cuts reporting. AMS estimates the total data submission cost burden to cattle packers to be $237,734. In comparison, the annual data submission cost burden to cattle packers was estimated at $266,560 in the 2000 final rule, which took effect in April 2001. According to the Bureau of Labor Statistics CPI inflation calculator, $1.00 in 2001 has the same buying power as $1.17 today. More precisely, the inflation factor to convert the average Consumer Price Index for 2001 to the current (May 2008) value is 1.174. In current dollar terms, then, the estimated data submission cost burden to cattle packers under the 2000 final rule equals $312,941. Thus, the total data submission cost burden to cattle packers is estimated at $75,207 less in the rule compared to the 2000 final rule expressed in comparable current dollar terms.

Swine packers will utilize up to three forms (Appendix B), two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. AMS estimates the total data submission cost burden to swine packers to be $153,329. In comparison, the annual data submission cost burden to swine packers was estimated at $166,400 in the 2000 final rule. In current dollar terms using the CPI inflation calculator, the estimated data submission cost burden to swine packers under the 2000 final rule will be $195,354. Thus, the total data submission cost burden to swine packers is estimated at $42,025 less in the rule compared to the 2000 final rule expressed in comparable current dollar terms.

Lamb packers will utilize up to six of these forms (Appendix C) when reporting information to AMS including two for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting and one for daily and weekly lamb carcass reporting. Lamb importers will utilize one of these forms when reporting information to AMS for reporting weekly imported boxed lamb cut sales. AMS estimates the total data submission cost burden to lamb packers and lamb importers to be $31,846. In comparison, the annual data submission cost burden to lamb packers and lamb importers was estimated at $48,390 in the 2000 final rule. In current dollar terms using the CPI inflation calculator, the estimated data submission cost burden to lamb packers and lamb importers under the 2000 final rule will be $56,810. Thus, the total data submission cost burden to lamb packers and lamb importers is estimated at $24,964 less in the rule compared to the 2000 final rule expressed in comparable current dollar terms.

The cost estimates for the rule are discussed in detail in the Paperwork Reduction Act Section.

Breakdown of Estimated Data Submission Cost Burden

I. NUMBER OF RESPONSES PER RESPONDENT PER YEAR

Form	Reporting days		Responses		Total responses
Cattle:					
LS–113	260	×	2 daily	=	520
LS–114	260	×	2 daily	=	520
LS–115	52	×	1 weekly	=	52
LS–117	52	×	1 weekly	=	52
LS–126	260	×	2 daily	=	520
LS–131	260	×	1 daily	=	260
LS–132	260	×	1 daily	=	260
Swine:					
LS–118	260	×	1 daily	=	260
LS–119	260	×	2 daily	=	520
LS–120	52	×	1 weekly	=	52
Lamb:					
Domestic:					
LS–121	260	×	1 daily	=	260
LS–123	52	×	1 weekly	=	52
LS–124	52	×	1 weekly	=	52
LS–125	52	×	1 weekly	=	52
LS–128	260	×	1 daily	=	260
LS–129	260	×	1 daily	=	260
Importer:					
LS–128	52	×	1 weekly	=	52

II. Number of Submission Hours per Respondent per Year

Form	Submissions/ year		Hours/ submission		Total hours/ year
Cattle:					
LS–113	520	×	.17	=	88.40
LS–114	520	×	.17	=	88.40
LS–115	52	×	.25	=	13.00
LS–117	52	×	.08	=	4.16
LS–126	520	×	.125	=	65.00
LS–131	260	×	.08	=	20.80
LS–132	260	×	.17	=	44.20
Swine:					
LS–118	260	×	.25	=	65.00
LS–119	520	×	.17	=	88.40
LS–120	52	×	.25	=	13.00
Lamb:					
Domestic:					
LS–121	260	×	.34	=	88.40
LS–123	52	×	.25	=	13.00
LS–124	52	×	.25	=	13.00
LS–125	52	×	.08	=	4.16
LS–128	260	×	.167	=	43.42
LS–129	260	×	.167	=	43.42
Importer:					
LS–128	52	×	.084	=	4.37

III. Total Submission Cost per Respondent per Year

Form	Total hours/ year		Cost/ hour		Total dollars/ year
Cattle:					
LS–113	88.40	×	$21.33	=	$1,886
LS–114	88.40	×	21.33	=	1,886
LS–115	13.00	×	21.33	=	277
LS–117	4.16	×	21.33	=	89
LS–126	65.00	×	21.33	=	1,386
LS–131	20.80	×	21.33	=	444
LS–132	44.20	×	21.33	=	943
Totals	323.96	×	21.33	=	6,911
Swine:					
LS–118	65.00	×	21.33	=	1,386
LS–119	88.40	×	21.33	=	1,886
LS–120	13.00	×	21.33	=	277
Totals	166.40	×	21.33	=	3,549
Lamb:					
Domestic:					
LS–121	88.40	×	21.33	=	1,886
LS–123	13.00	×	21.33	=	277
LS–124	13.00	×	21.33	=	277
LS–125	4.16	×	21.33	=	89
LS–128	43.42	×	21.33	=	926
LS–129	43.42	×	21.33	=	926
Importer:					
LS–128	4.37	×	21.33	=	93
Totals	209.77	×	21.33	=	4,474

IV. Total Yearly Submission Cost for All Respondents

Form	Total dollars/ year		Respondents		Total cost
Cattle:					
LS–113	$1,886	×	34	=	$64,124
LS–114	1,886	×	34	=	64,124

IV. TOTAL YEARLY SUBMISSION COST FOR ALL RESPONDENTS—Continued

Form	Total dollars/ year		Respondents		Total cost
LS–115	277	×	34	=	9,418
LS–117	89	×	34	=	3,026
LS–126	1,386	×	48	=	66,528
LS–131	444	×	22	=	9,768
LS–132	943	×	22	=	20,746
Subtotal					237,734
Swine:					
LS–118	1,386	×	52	=	72,072
LS–119	1,886	×	40	=	75,440
LS–120	277	×	21	=	5,817
Subtotal					153,329
Lamb:					
Domestic:					
LS–121	1,886	×	6	=	11,316
LS–123	277	×	5	=	1,385
LS–124	277	×	5	=	1,385
LS–125	89	×	6	=	534
LS–128	926	×	10	=	9,260
LS–129	926	×	8	=	7,408
Importer:					
LS–128	93	×	6	=	558
Subtotal					31,846
Grand total					422,909

The total cost burden to packers and importers required to submit information under this rule includes initial startup and annual maintenance costs for electronic submission of data, annual recordkeeping costs, and annual data submission costs. Total reporting costs to cattle packers are estimated to be $7,548 per plant, $5,544 for swine packers, $5,724 for lamb slaughtering plants, and $2,688 for lamb importers. In comparison, total reporting costs in the 2000 final rule were estimated to be $7,420 per plant for cattle packers, $5,308 for swine packers, $7,860 for lamb slaughtering plants, and $2,070 for lamb importers. In current dollar values, however, estimated costs in the 2000 final rule equal $8,711 per plant for cattle packers, $6,232 for swine packers, $9,228 for lamb slaughtering plants, and $2,430 for lamb importers. With the exception of lamb importers which have an increase of $258, estimated total reporting costs per plant for all respondents are lower in the rule than in the 2000 final rule expressed in comparable current dollar values.

TOTAL ANNUAL COST BURDEN TO RESPONDENTS

	Cost per respondent		Number of respondents		Total cost *
Cattle:					
Startup/Maintenance	$672	×	48	=	$32,256
Recordkeeping	1,923	×	48	=	92,304
Data Submission	4,953	×	48	=	237,734
					362,294
Average Cost per Respondent: $362,294 / 48 = $7,548					
Swine:					
Startup/Maintenance	672	×	52	=	34,944
Recordkeeping	1,923	×	52	=	99,996
Data Submission	2,949	×	52	=	153,329
					288,269
Average Cost per Respondent: $288,269 / 52 = $5,544					
Lamb:					
Domestic:					
Startup/Maintenance	672	×	10	=	6,720
Recordkeeping	1,923	×	10	=	19,230
Data Submission	3,129	×	10	=	31,288

TOTAL ANNUAL COST BURDEN TO RESPONDENTS—Continued

	Cost per respondent		Number of respondents		Total cost *
					57,238
Average Cost per Respondent: $57,238 / 10 = $5,724					
Importer:					
Startup/Maintenance	672	×	6	=	4,032
Recordkeeping	1,923	×	6	=	11,538
Data Submission	93	×	6	=	558
					16,128
Average Cost per Respondent: $16,128 / 6 = $2,688					
Grand total, all species					723,929

* Totals may reflect differences in numerical rounding.

In addition to these costs to packers for submitting information, the mandatory price reporting program will cost approximately $6.3 million per fiscal year to the Federal government. The 50 staff years required to administer and produce high quality mandatory price reports include reporters, auditors, clerical personnel, and computer specialists. These employees will be located in three AMS offices located across the country. Salary-related costs are estimated at $4.9 million per year. Other costs include approximately $.3 million for travel and transportation; and $1.1 million for miscellaneous costs such as office space, utilities, communications costs, printing, training, office supplies, equipment (including computers, software, and licenses), and contractual services necessary to maintain the system. In the 2000 final rule, costs to the Federal government for the program were estimated at $5.9 million for fiscal year 2001, which equals $6.9 million in current dollar value. Thus, estimated costs to the Federal government are $600,000 less in the rule compared to the 2000 final rule expressed in current dollar values.

The authority for the Act expires on September 30, 2010. Therefore, this rule will be effective for approximately 3 years (2008–2010). Annual costs for this rulemaking are estimated at approximately $7.0 million per year: $723,929 for respondents to submit and maintain data plus $6.3 million to USDA for operation of the LMR program. At a real discount rate of 3 percent, the discounted present value of the total cost to the private sector and the Federal government for the life of the program will be nearly $20.5 million. Using estimated costs from the 2000 final rule and assuming the same 3-year duration, the comparable discounted present value for the life of the program would be over $22.6 million expressed in current dollars. Thus, estimated total program costs are reduced by nearly $2.1 million over the life cycle of the rule in comparison to the 2000 final rule at the 3 percent discount rate. At a real discount rate of 7 percent, the discounted present value of the total cost to the private sector and the Federal government for the life of the program will be $19.7 million. Using estimated costs from the 2000 final rule and assuming the same 3-year duration, the comparable discounted present value for the life of the program would be $21.8 million expressed in current dollars. Estimated total program costs are reduced by $2.1 million over the life cycle of the rule in comparison to the 2000 final rule at the 7 percent discount rate. The present values for the 3-year life of the program assume that all costs are incurred at the beginning of each year of the program.

Regulatory Flexibility Act

In General. This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.). The purpose of the RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The Act requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under these regulations and exists nowhere else. Therefore, this rule does not duplicate market information reasonably accessible to the Agency.

Objectives and Legal Basis. The objective of this rule is to improve the price and supply reporting services of USDA in order to increase the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of cattle, swine, lambs, and products of such livestock as specifically directed by the Reauthorization Act and these regulations, as described in detail in the background section.

Estimated Number of Small Businesses. AMS estimates that approximately 65 firms operating approximately 115 plants will be required to report market information under this rule. AMS estimates that 60 of these firms represent cattle, swine, and sheep slaughtering companies, with approximately 5 additional firms that import lamb carcasses and lamb meat.

According to Small Business Administration (SBA) definitions, a meat packing firm having fewer than 500 employees is a small business. This criterion applies to most of the firms required to report under the rule, including all of the cattle and swine packers. Some of the lamb importers required to report under this rule are brokerage operations that do not slaughter lambs. For meat and meat product merchant wholesalers, the SBA defines a firm having fewer than 100 employees as a small business.

In formulating this rule, particular consideration was given to reducing the burden on entities while still achieving the objectives of the rule. Under the rule, thresholds are set that define those entities that are required to report information on purchases of live cattle, swine and lambs, as well as information on domestic and export sales of boxed beef cuts including applicable branded product, and sales of lamb carcasses,

boxed lamb cuts including applicable branded product, and imported boxed lamb cuts including applicable branded product.

These packers and importers are required to report to AMS the details of all transactions involving purchases of livestock, domestic and export sales of boxed beef cuts including applicable branded product, sales of domestic boxed lamb cuts including applicable branded product, imported boxed lamb cuts including applicable branded product, and lamb carcasses. Cattle and swine information will be reported to AMS according to the schedule directed by this rule with purchases of swine reported three times each day, purchases of cattle twice each day, and sales of domestic and exported boxed beef cuts, including applicable branded product, reported twice each day. Lamb information will be reported to AMS according to the schedule mandated by this rule with purchases of lambs reported once each day and sales of lamb carcasses reported once each day. Previous week sales of imported boxed lamb cuts including applicable branded boxed lamb cuts will be reported once weekly on the first reporting day of the week.

In any calendar year, only Federally inspected cattle plants that slaughtered an average of 125,000 head of cattle a year for the immediately preceding 5 calendar years are required to report. Additionally, any Federally inspected cattle plant that did not slaughter cattle during the immediately preceding 5 calendar years is required to report if the Secretary determines that the plant should be considered a packer required to report based on its capacity. For entities that did not slaughter cattle during the immediately preceding 5 calendar years, such as a new plant or existing plant that resumes operations, the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in the law and these regulations. This accounts for an expected 49 out of 636 Federally inspected cattle plants or 7.7 percent of all Federally inspected cattle plants.

For any calendar year, any Federally inspected swine plant that slaughtered an average of 100,000 head of swine a year for the immediately preceding 5 calendar years is required to report information, as is any person that slaughtered an average of at least 200,000 sows, boars, or any combination thereof, per year during the immediately preceding 5 calendar years. Additionally, any Federally inspected swine plant or person that did not slaughter swine during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant is required to report. This accounts for an expected 52 out of 614 Federally inspected swine plants or 8.5 percent of all Federally inspected swine plants.

In any calendar year, a Federally inspected lamb plant that slaughtered the equivalent of an average of 75,000 head of lambs a year for the immediately preceding 5 calendar years is considered a packer and required to report. A packer includes a Federally inspected processing plant that purchases and processes an average of 75,000 lamb carcasses annually rather than slaughter live lambs. Additionally, any Federally inspected processing plant that did not slaughter an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant is required to report. This accounts for an expected 10 lamb plants and 6 importers. The expected total of 10 out of 484 lamb plants amounts to 2.1 percent of all Federally inspected lamb plants.

For any calendar year, lamb importers that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years are required to report. Additionally, any lamb importer that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on the volume of lamb imports is required to report. Some lamb plants may also be importers.

An estimated 92.3 percent of all Federally inspected cattle plants, 91.5 percent of all Federally inspected swine plants, and 97.9 percent of all Federally inspected lamb plants in the U.S. are exempted by this rule from reporting information. For all livestock species, there were 793 slaughter plants under Federal inspection and 2,060 slaughter plants under other forms of inspection (such as State inspection) on January 1, 2007. Plants that are not under Federal inspection are smaller operations that would be considered small businesses. An estimated 110 livestock slaughter plants will be required to report under this rule. Conversely, 2,743 or 96.1 percent of all livestock plants in the United States will be exempt from mandatory reporting under this rule.

According to U.S. Census Bureau *Statistics of U.S. Businesses,* there were 1,718 animal (except poultry) slaughtering[6] firms with payroll in the United States in 2004. These firms operated 1,816 establishments. Of these concerns, there were 46 firms with 500 employees or more, accounting for 136 establishments. Conversely, there were 1,672 firms with fewer than 500 employees, accounting for 1,680 establishments.

The companies required to report under the Act and this rule represent the largest slaughtering operations in each respective species. This rule will require mandatory reporting by an estimated 60 livestock slaughtering firms representing the largest cattle, swine, and sheep slaughtering companies. This fact, coupled with the *Statistics of U.S. Businesses* data leads to the conclusion that 46 of the livestock slaughtering firms required to report under this rule have 500 employees or more. Therefore, AMS estimates that 14 of the 60 livestock slaughtering firms required to report under this rule are small businesses as defined by SBA. In percentage terms, about 23 percent of the animal slaughtering companies required to report under this rule are small businesses. In terms of the industry, this rule requires reporting by only 0.8 percent of all small businesses in the animal (except poultry) slaughtering industry. Moreover, the firms required to report are the largest of the firms in the industry classified as small businesses.

U.S. Census Bureau statistics are not sufficiently disaggregated to enable inferences to be drawn about the small business classification of the lamb carcass and lamb meat importers required to report under the rule. However, based on its knowledge of the industry and previous experience with livestock mandatory reporting, AMS estimates that all of the lamb importers would be classified as small businesses

[6] North American Industry Classification System (NAICS) code 311611. U.S. Census Bureau 2004 Nonemployer Statistics show that there were 1,921 nonemployer establishments in the animal slaughtering and processing industry (NAICS code 31161), but nonemployer statistics at the more disaggregated NAICS six-digit level are not reported. A nonemployer is a business without paid employees that is subject to federal income tax. Most nonemployers are self-employed individuals operating very small unincorporated businesses. The NASS data on the number of livestock slaughter plants includes businesses with payroll as well as nonemployer firms, but does not report the size of firms nor the number of employees. Therefore, the NASS data provides the most accurate measure of the number of businesses potentially subject to the rule, while the Census Bureau data provide a means for estimating the number of small businesses potentially subject to the rule.

under the SBA size standard of fewer than 100 employees for meat and meat product merchant wholesalers.[7] In combination with the animal slaughtering firms, AMS estimates that a total of 19 firms out of 65 firms required to report under this rule meet the SBA definition for small businesses. In percentage terms, about 29 percent of the firms required to report under this rule would be classified as small businesses. Although classified as small businesses, these firms are the largest firms in their respective specialties.

Projected Reporting. This rule requires the reporting of specific market information regarding the buying and selling of livestock and livestock products. The information will be reported to AMS by electronic means. Electronic reporting involves the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS (Appendices A–C).

Once the required information has been entered into the AMS database, it will be aggregated and processed into various market reports which will be released according to the daily and weekly time schedule set forth in these regulations.

As an alternative, based on prior experience, AMS found that some of the smaller entities covered under mandatory reporting would benefit from a web-based system for data submission. Accordingly, AMS developed a system that will be available to firms that find it to be more cost effective than developing an electronic interface to submit data to AMS.

AMS estimates the total annual burden on each cattle packer and boxed beef processing firm to average $7,548, including $4,953 for annual costs associated with electronically submitting data, $672 for startup/annual maintenance costs, and $1,923 for the storage and maintenance of electronic files that were submitted to AMS. This figure was calculated by estimating the time required to complete the necessary data submission and factoring by the number of times reporting is required per day for an estimated total of 260 reporting days in a year (see Paperwork Reduction Act section for a complete, detailed discussion). Because data submission costs are directly associated with the volume of data submissions, total annual costs for smaller operations likely will be less than the average, while costs for larger operations likely will exceed the average.

AMS estimates the total annual burden on each swine packing firm to be $5,544, including $2,949 for annual costs associated with electronically submitting data, $672 for startup/annual maintenance costs, and $1,923 for the storage and maintenance of electronic files that were submitted to AMS. This estimate does not include costs associated with reporting sales of pork products, which are not required to be reported. As with cattle packers, annual costs for smaller swine packing operations likely will be less than the average, while costs for larger operations likely will exceed the average.

AMS estimates the total annual burden on each lamb packer to be $5,724 including $3,129 for annual costs associated with electronically submitting data, $672 for startup/annual maintenance costs, and $1,923 for the storage and maintenance of electronic files that were submitted to AMS. AMS estimates the total annual burden on each importer of lamb to be $2,688, including $93 for annual costs associated with electronically submitting data, $672 for startup/annual maintenance costs, and $1,923 for the storage and maintenance of electronic files that were submitted to AMS.

Projected Recordkeeping. Each packer and importer required to report information to the Secretary must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required by these regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Reporting packers and importers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers and importers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain. The paperwork burden that is imposed on the packers and importers is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, AMS has not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule. AMS will continue to report market information collected through its voluntary market reporting program provided the collection of such information does not duplicate the information collection requirements of this rule.

Professional skills required for recordkeeping under this rule are not different than those already employed by the reporting entities. Reporting will be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this rule.

Alternatives. This rule, as directed by the Reauthorization Act, requires cattle and swine packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. Further, lamb slaughter and processing plants and lamb importers of a certain size are required by these regulations to report information to the Secretary at prescribed times throughout the day and week. The Act and these regulations exempt the vast majority of small businesses by the establishment of slaughter, processing, and import capacity thresholds.

AMS recognizes that most economic impact of this rule on those small entities required to report involves the manner in which information must be reported to the Secretary. However, in developing this rule, AMS considered other means by which the objectives of this rule could be accomplished, including reporting the required information by telephone, facsimile and regular mail. AMS believes these alternatives are not capable of meeting the program objectives, especially timely reporting. The Reauthorization Act prescribes specific times that reporting entities must report to AMS and similarly prescribes specific times for publication of reports by AMS. AMS believes electronic submission to be the only method capable of allowing AMS to collect, review, process, aggregate and publish reports while complying with the specific time-frames set forth in the Act.

To respond to concerns of smaller operations, AMS developed a web-based input form for submitting data online. Based on prior experience, AMS found that some of the smaller entities covered under mandatory price reporting would

[7] North American Industry Classification System code 424470.

benefit from such a web-based submission system. Accordingly, AMS developed such a system for program implementation.

Additionally, to further assist small businesses, AMS may provide for an exception to electronic reporting in emergencies, such as power failures or loss of Internet accessibility, or in cases when an alternative is agreeable to AMS and the reporting entity.

Other than these alternatives, there are no other practical and feasible alternatives to the methods of data transmission that are less burdensome to small businesses. AMS will work actively with those small businesses required to report to minimize the burden on them to the maximum extent practicable.

To assist the industry in achieving compliance with this rule, during the period between publication of this rule and its effective date, AMS will provide assistance and training to covered entities as needed to ensure that they have been given the technical information necessary to comply with the electronic data transmission requirements.

Paperwork Reduction Act

In accordance with OMB regulation (5 CFR part 1320) that implements the Paperwork Reduction Act (44 U.S.C. 3501–3520) (PRA), the information collection requirements associated with this program have been approved by OMB and assigned OMB control number 0581–0186. In accordance with 5 CFR part 1320, we have included below a description of the reporting and recordkeeping requirements and an estimate of the annual burden on packers that will be required to report information under this rule.

Title: Livestock Mandatory Reporting Act of 1999.

OMB Number: 0581–0186.

Expiration Date: December 31, 2007.

Type of Request: Revision of currently approved information collection.

Abstract: The information collection and recordkeeping requirements in this regulation are essential to operating a mandatory program of livestock and livestock products reporting. Based on the information available, AMS estimates that there are 48 beef packer plants, 52 pork packer plants, 12 lamb packer plants and 6 lamb importers that are required to report market information under this rule (1 lamb entity is both a packer and an importer). These companies have similar recordkeeping systems and business operation practices and conduct their operations in a similar manner. AMS believes that all of the information required under this rule can be collected from existing materials and systems. In addition, most of these firms already have established systems for reporting information to AMS because they were subject to the requirements of the program when it was in effect from April 2, 2001, through September 30, 2005. Moreover, most firms have continued to report data voluntarily to AMS. These firms will have minimal startup costs, requiring only minor modifications of their current data reporting systems to be compatible with the requirements of the rule. The PRA also requires AMS to measure the recordkeeping burden. Under this rule, each packer and importer required to report must maintain and make available upon request for 2 years, such records as are necessary to verify the accuracy of the information required to be reported. These records include original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Under this rule, the electronic data files which the packers are required to utilize when submitting information to AMS will have to be maintained as these files provide the best record of compliance. The recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since records of original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock are stored and maintained as a matter of normal business practice by these companies for a period in excess of 2 years, additional annual costs will be nominal. AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this rule to be $1,923.10. This estimate includes the cost of electronic data storage media, backup electronic data storage media, and backup software required to maintain an estimated annual electronic recordkeeping and backup burden of 20 megabytes, on average, per respondent. In addition, this estimate includes the cost per employee to maintain such records which is estimated to average 70 hours per year at $21.33 per hour for a total salary component cost of $1,493.10 per year.

ANNUAL RECORDKEEPING COST PER RESPONDENT

Labor hours per year	70
Labor cost per hour	× $21.33
Sub-total labor cost per year	$1,493.10
Electronic storage cost *	+ $430.00
Total Recordkeeping Cost	$1,923.10

* Includes cost of hard electronic storage (estimated to average 20 Mb/year), backup tape media, backup tape drive, and backup software.

In this rule, information collection requirements include the submission of the required information on a daily and weekly basis in the standard format provided in the following forms: (1) Live Cattle Daily Report (Current Established Prices), (2) Live Cattle Daily Report (Committed and Delivered Cattle), (3) Live Cattle Weekly Report, (4) Cattle Premiums and Discounts Weekly Report, (5) Cow/Bull Plant Delivered Bids (Dressed Basis), (6) Live Cow/Bull Daily Purchase Report, (7) Boxed Beef Daily Report, (8) Swine Prior Day Report, (9) Swine Daily Report, (10) Swine Noncarcass Merit Premium Weekly Report, (11) Live Lamb Daily Report (Current Established Prices), (12) Live Lamb Weekly Report, (13) Live Lamb Weekly Report (Formula Purchases), (14) Lamb Premiums and Discounts Weekly Report, (15) Boxed Lamb Daily Report, and (16) Lamb Carcass Report. Copies of these 16 forms are included in Appendices at the end of this rule. Cattle packers will utilize up to seven of these forms (not all cattle packers must submit all cattle forms) (Appendix A) when reporting information to AMS including four for

daily cattle reporting, two for weekly cattle reporting, and one for daily boxed beef cuts reporting. Swine packers will utilize up to three forms (not all swine packers must submit all swine forms) (Appendix B), two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. Lamb packers will utilize up to six of these forms (not all lamb packers must submit all lamb forms) (Appendix C) when reporting information to AMS, including one for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting, and one for daily lamb carcass reporting. Lamb importers will utilize one of these forms when reporting information to AMS for reporting weekly imported boxed lamb cut sales.

These information collection requirements have been designed to minimize disruption to the normal business practices of the affected entities. Each of these forms requires the minimal amount of information necessary to properly describe each reportable transaction, as required under this rule. The number of forms is a result of an attempt to reduce the complexity of each form.

Live Cattle Daily Report (Current Established Prices): Form LS–113.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 34 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,006 hours.

Total Cost: $64,124.

Live Cattle Daily Report (Committed and Delivered Cattle): Form LS–114.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 34 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,006 hours.

Total Cost: $64,124.

Live Cattle Weekly Report: Form LS–115.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 34 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 442 hours.

Total Cost: $9,418.

Cattle Premiums and Discounts Weekly Report: Form LS–117.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 34 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 141 hours.

Total Cost: $3,026.

Cow/Bull Plant Delivered Bids (Dressed Basis): Form LS–131.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on bid prices for cows and bulls to the Secretary.

Estimated Number of Respondents: 22 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 458 hours.

Total Cost: $9,768.

Live Cow/Bull Daily Purchase Report: Form LS–132.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on cow and bull purchases to the Secretary.

Estimated Number of Respondents: 22 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 972 hours.

Total Cost: $20,746.

Boxed Beef Daily Report: Form LS–126.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .125 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on domestic and export boxed beef cut sales to the Secretary.

Estimated Number of Respondents: 48 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,120 hours.

Total Cost: $66,528.

Swine Prior Day Report: Form LS–118.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 52 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,380 hours.

Total Cost: $72,072.

Swine Daily Report: Form LS–119.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 40 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,536 hours.

Total Cost: $75,440.

Swine Noncarcass Merit Premium Weekly Report: Form LS–120.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 21 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 273 hours.

Total Cost: $5,817.

Live Lamb Daily Report (Current Established Prices): Form LS–121.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .34 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 6 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 530 hours.

Total Cost: $11,316.

Live Lamb Weekly Report: Form LS–123.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 5 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 65 hours.

Total Cost: $1,385.

Live Lamb Weekly Report (Formula Purchases): Form LS–124.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 5 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 65 hours.

Total Cost: $1,385.

Lamb Premiums and Discounts Weekly Report: Form LS–125.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 6 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 25 hours.

Total Cost: $534.

Boxed Lamb Report: Form LS–128.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response for domestic packing plants and .084 hours per electronically submitted response for importers.

Respondents: Packer processing plants and importers required to report information on boxed lamb cut sales to the Secretary.

Estimated Number of Respondents: 16 entities (including 1 entity that both processes and imports).

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days) for domestic packing plants; 52 (1 per week for 52 weeks) for importers.

Estimated Total Annual Burden on Respondents: 434 hours for domestic packing plants and 26 hours for importers.

Total Cost: $9,260 for domestic packing plants and $558 for importers for a total of $9,818.

Lamb Carcass Report: Form LS–129.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on lamb carcass sales to the Secretary.

Estimated Number of Respondents: 8 entities.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 347 hours.

Total Cost: $7,408.

Breakdown of Estimated Data Submission Cost Burden

I. NUMBER OF RESPONSES PER RESPONDENT PER YEAR

Form	Reporting days		Responses		Total responses
Cattle:					
LS–113	260	×	2 daily	=	520
LS–114	260	×	2 daily	=	520
LS–115	52	×	1 weekly	=	52
LS–117	52	×	1 weekly	=	52
LS–126	260	×	2 daily	=	520
LS–131	260	×	1 daily	=	260
LS–132	260	×	1 daily	=	260
Swine:					
LS–118	260	×	1 daily	=	260
LS–119	260	×	2 daily	=	520
LS–120	52	×	1 weekly	=	52
Lamb:					
Domestic:					
LS–121	260	×	1 daily	=	260
LS–123	52	×	1 weekly	=	52
LS–124	52	×	1 weekly	=	52
LS–125	52	×	1 weekly	=	52
LS–128	260	×	1 daily	=	260
LS–129	260	×	1 daily	=	260
Importer:					
LS–128	52	×	1 weekly	=	52

II. Number of Submission Hours per Respondent per Year

Form	Submissions/ year		Hours/ submission		Total hours/ year
Cattle:					
LS–113	520	×	.17	=	88.40
LS–114	520	×	.17	=	88.40
LS–115	52	×	.25	=	13.00
LS–117	52	×	.08	=	4.16
LS–126	520	×	.125	=	65.00
LS–131	260	×	.08	=	20.80
LS–132	260	×	.17	=	44.20
Swine:					
LS–118	260	×	.25	=	65.00
LS–119	520	×	.17	=	88.40
LS–120	52	×	.25	=	13.00
Lamb:					
Domestic:					
LS–121	260	×	.34	=	88.40
LS–123	52	×	.25	=	13.00
LS–124	52	×	.25	=	13.00
LS–125	52	×	.08	=	4.16
LS–128	260	×	.167	=	43.42
LS–129	260	×	.167	=	43.42
Importer:					
LS–128	52	×	.084	=	4.37

III. Total Submission Cost per Respondent per Year

Form	Total hours/ year		Cost/hour		Total dollars/ year
Cattle:					
LS–113	88.40	×	$21.33	=	$1,886
LS–114	88.40	×	21.33	=	1,886
LS–115	13.00	×	21.33	=	277
LS–117	4.16	×	21.33	=	89
LS–126	65.00	×	21.33	=	1,386
LS–131	20.80	×	21.33	=	444
LS–132	44.20	×	21.33	=	943
Totals	323.96	×	21.33	=	6,911
Swine:					
LS–118	65.00	×	21.33	=	1,386
LS–119	88.40	×	21.33	=	1,886
LS–120	13.00	×	21.33	=	277
Totals	166.40	×	21.33	=	3,549
Lamb:					
Domestic:					
LS–121	88.40	×	21.33	=	1,886
LS–123	13.00	×	21.33	=	277
LS–124	13.00	×	21.33	=	277
LS–125	4.16	×	21.33	=	89
LS–128	43.42	×	21.33	=	926
LS–129	43.42	×	21.33	=	926
Importer:					
LS–128	4.37	×	21.33	=	93
Totals	209.77	×	21.33	=	4,474

IV. TOTAL YEARLY SUBMISSION COST FOR ALL RESPONDENTS

Form	Total dollars/ year		Respondents		Total cost
Cattle:					
LS–113	$1,886	×	34	=	$64,124
LS–114	1,886	×	34	=	64,124
LS–115	277	×	34	=	9,418
LS–117	89	×	34	=	3,026
LS–126	1,386	×	48	=	66,528
LS–131	444	×	22	=	9,768
LS–132	943	×	22	=	20,746
Subtotal					237,734
Swine:					
LS–118	1,386	×	52	=	72,072
LS–119	1,886	×	40	=	75,440
LS–120	277	×	21	=	5,817
Subtotal					153,329
Lamb:					
Domestic:					
LS–121	1,886	×	6	=	11,316
LS–123	277	×	5	=	1,385
LS–124	277	×	5	=	1,385
LS–125	89	×	6	=	534
LS–128	926	×	10	=	9,260
LS–129	926	×	8	=	7,408
Importer:					
LS–128	93	×	6	=	558
Subtotal					31,846
Grand total					422,909

Estimated Total Annual Burden on Respondents by Species:

Live Cattle and Boxed Beef: $362,302 including $237,734 for annual costs associated with electronically submitted responses (11,145 annual hours @ $21.33 per hour), electronic submission development and annual system maintenance costs of $32,256 ($672 per 48 respondents), and $92,304 ($1,923 per 48 respondents) for the storage and maintenance of electronic files that were submitted to AMS.

Live Swine: $288,302 including $153,329 for annual costs associated with electronically submitted responses (7,189 annual hours @ $21.33 per hour), electronic submission development and annual system maintenance costs of $34,944 ($672 per 52 respondents), and $99,996 ($1,923 per 52 respondents) for the storage and maintenance of electronic files that were submitted to AMS.

Live Lambs, Boxed Lamb, and Lamb Carcasses: $73,366 including $57,238 for packers ($31,288 for annual costs associated with electronically submitted responses (1,466 annual hours @ $21.33 per hour), electronic submission development and annual system maintenance costs of $6,720 ($672 per 10 respondents), and $19,230 ($1,923 per 10 respondents) for the storage and maintenance of electronic files that were submitted to AMS) and $16,128 for importers ($558 for annual costs associated with electronically submitted responses) (26 annual hours @ $21.33 per hour), electronic submission development and annual system maintenance costs of $4,032 ($672 per 6 respondents), and $11,538 ($1,923 per 6 respondents) for the storage and maintenance of electronic files that were submitted to AMS).

List of Subjects in 7 CFR Part 59

Cattle, Hogs, Sheep, Livestock, Lamb.

■ For the reasons set forth in the preamble, Title 7, Chapter I of the Code of Federal Regulations is amended by revising part 59 to read as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

Subpart A—General Provisions

Sec.

59.10 General administrative provisions.
59.20 Recordkeeping.
59.30 Definitions.

Subpart B—Cattle Reporting

59.100 Definitions.
59.101 Mandatory daily reporting for steers and heifers.
59.102 Mandatory daily reporting for cows and bulls.
59.103 Mandatory weekly reporting for steers and heifers.
59.104 Mandatory reporting of boxed beef sales.

Subpart C—Swine Reporting

59.200 Definitions.
59.201 General reporting provisions.
59.202 Mandatory daily reporting for barrows and gilts.
59.203 Mandatory daily reporting for sows and boars.
59.204 Mandatory weekly reporting for swine.

Subpart D—Lamb Reporting

59.300 Definitions.
59.301 Mandatory daily reporting for lambs.
59.302 Mandatory weekly reporting for lambs.
59.303 Mandatory reporting of lamb carcasses and boxed lamb.

Subpart E—OMB Control Number

59.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 1635–1636i.

Subpart A—General Provisions

§ 59.10 General administrative provisions.

(a) *Reporting by Packers and Importers.* A packer or importer shall report all information required under this Part on an individual lot basis.

(b) *Reporting Schedule.* Whenever a packer or importer is required to report information on transactions of livestock and livestock products under this Part by a set time, all covered transactions up to within one half hour of the reporting deadline shall be reported. Transactions completed during the one half hour prior to the previous reporting time, but not reported in the previous report, shall be reported at the next scheduled reporting time.

(c) *Regional Reporting and Aggregation.* The Secretary shall make information obtained under this Part available to the public only in a manner that:

(1) Ensures that the information is published on a national and a regional or statewide basis as the Secretary determines to be appropriate;

(2) Ensures that the identity of a reporting person or the entity which they represent is not disclosed; and

(3) Market information reported to the Secretary by packers and importers shall be aggregated in such a manner that the market reports issued will not disclose the identity of persons, packers and importers, including parties to a contract and packer's and importer's proprietary information.

(d) *Adjustments.* Prior to the publication of any information required under this Part, the Secretary may make reasonable adjustments in information reported by packers and importers to reflect price aberrations or other unusual or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants.

(e) *Reporting of Activities on Weekends and Holidays.* Livestock and livestock products committed to a packer, or importer, or purchased, sold, or slaughtered by a packer or importer on a weekend day or holiday shall be reported to the Secretary in accordance with the provisions of this Part and reported by the Secretary on the immediately following reporting day. A packer shall not be required to report such actions more than once on the immediately following reporting day.

(f) *Reporting Methods.* Whenever information is required to be reported under this Part, it shall be reported by electronic means and shall adhere to a standardized format established by the Secretary to achieve the objectives of this Part, except in emergencies or in cases when an alternative method is agreeable to the entity required to report and AMS.

§ 59.20 Recordkeeping.

(a) *In General.* Each packer or importer required to report information to the Secretary under the Act and this Part shall maintain for 2 years and make available to the Secretary the following information on request:

(1) The original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock or livestock products; and

(2) Such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under the Act and this Part.

(b) *Purchases of Cattle and Swine and Sales of Boxed Beef Cuts.* A record of a purchase of a lot of cattle or swine, or a sale of a unit of boxed beef cuts, by a packer shall evidence whether the purchase or sale occurred:

(1) Before 10 a.m. central time;

(2) Between 10 a.m. and 2 p.m. central time; or

(3) After 2 p.m. central time.

(c) *Purchases of Lambs.* A record of a purchase of a lot of lambs by a packer shall evidence whether the purchase occurred:

(1) Before 2 p.m. central time; or

(2) After 2 p.m. central time.

(d) *Sales of Lamb Carcasses and Sales of Boxed Lamb Cuts.* A record of a sale by a packer of lamb carcasses and cuts, shall evidence time and date the sale occurred:

(1) Before 2 p.m. central time; or

(2) After 2 p.m. central time.

A record of sale by an importer of lamb cuts shall evidence the date the sale occurred.

(e) *Reporting Sales of Boxed Beef Cuts and Sales of Boxed Lamb Cuts.*

(1) Beef packers must report all sales of boxed beef items by the applicable Institutional Meat Purchase Specifications (IMPS) item number or the boxed beef items' cutting and trimming specifications.

(2) Lamb packers and importers must report all sales of boxed lamb items by the applicable Institutional Meat Purchase Specifications (IMPS) item number or the boxed lamb items' cutting and trimming specifications.

§ 59.30 Definitions.

The following definitions apply to this part.

Act. The term ''Act'' means Subtitle B of the Agricultural Marketing Act of 1946, as amended; 7 U.S.C. 1635–1636h.

Base price. The term ''base price'' means the price paid for livestock, delivered at the packing plant, before application of any premiums or discounts, expressed in dollars per hundred pounds of hot carcass weight.

Basis level. The term ''basis level'' means the agreed on adjustment to a future price to establish the final price paid for livestock.

Current slaughter week. The term ''current slaughter week'' means the period beginning Monday, and ending Sunday, of the week in which a reporting day occurs.

Discount. The term ''discount'' means the adjustment, expressed in dollars per one hundred pounds, subtracted from the base price due to weight, quality characteristics, yield characteristics, livestock class, dark cutting, breed, dressing percentage, or other characteristic.

Exported. The term ''exported'' means livestock or livestock products that are physically shipped to locations outside of the 50 States.

F.O.B. The term ''F.O.B.'' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer (e.g., F.O.B. Plant, F.O.B. Feedlot).

Imported. The term ''imported'' means livestock that are raised to slaughter weight outside of the 50 States or livestock products produced outside of the 50 States.

Institutional Meat Purchase Specifications. Specifications describing various meat cuts, meat products, and meat food products derived from all livestock species, commonly abbreviated ''IMPS'', and intended for use by any meat procuring activity. Copies of the IMPS may be obtained from the U.S. Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program located at Room 2603 South Building, 1400 Independence Ave., SW., Washington, DC 20250. Phone (202) 720–4486 or Fax (202) 720–1112. Copies may also be obtained over the Internet at: *http://www.ams.usda.gov/lsg/stand/st-pubs.htm.*

Livestock. The term ''livestock'' means cattle, swine, and lambs.

Lot. (1) When used in reference to livestock, the term ''lot'' means a group of one or more livestock that is identified for the purpose of a single transaction between a buyer and a seller;

(2) When used in reference to lamb carcasses, the term ''lot'' means a group of one or more lamb carcasses sharing

a similar weight range category and comprising a single transaction between a buyer and seller; or

(3) When used in reference to boxed beef and lamb, the term ''lot'' means a group of one or more boxes of beef or lamb items sharing cutting and trimming specifications and comprising a single transaction between a buyer and seller.

Marketing. The term ''marketing'' means the sale or other disposition of livestock, livestock products, or meat or meat food products in commerce.

Negotiated purchase. The term ''negotiated purchase'' means a cash or spot market purchase by a packer of livestock from a producer under which the base price for the livestock is determined by seller-buyer interaction and agreement on a delivery day. The livestock are scheduled for delivery to the packer not more than 14 days after the date on which the livestock are committed to the packer.

Negotiated grid purchase. The term ''negotiated grid purchase'' in reference to cattle means the negotiation of a base price, from which premiums are added and discounts are subtracted, determined by seller-buyer interaction and agreement on a delivery day. The livestock are scheduled for delivery to the packer not more than 14 days after the date on which the livestock are committed to the packer.

Negotiated sale. The term ''negotiated sale'' means a cash or spot market sale by a producer of livestock to a packer under which the base price for the livestock is determined by seller-buyer interaction and agreement on a delivery day. The livestock are scheduled for delivery to the packer not later than 14 days after the date on which the livestock are committed to the packer. When used in reference to sales of boxed beef or lamb cuts or lamb carcasses the term ''negotiated sale'' means a sale by a packer selling boxed beef or lamb cuts or lamb carcasses to a buyer of boxed beef or lamb cuts or lamb carcasses under which the price for the boxed beef or lamb cuts or lamb carcasses is determined by seller-buyer interaction and agreement on a day.

Origin. The term ''origin'' means the State where the livestock were fed to slaughter weight.

Percent lean. The term ''percent lean'' means the value equal to the average percentage of the carcass weight comprised of lean meat.

Person. The term ''person'' means any individual, group of individuals, partnership, corporation, association, or other entity.

Premium. The term ''premium'' means the adjustment, expressed in dollars per one hundred pounds, added to the base price due to weight, quality characteristics, yield characteristics, livestock class, and breed.

Priced. The term ''priced'' means the time when the final price is determined either through buyer-seller interaction and agreement or as a result of some other price determining method.

Prior slaughter week. The term prior ''slaughter week'' means the Monday through Sunday prior to a reporting day.

Producer. The term ''producer'' means any person engaged in the business of selling livestock to a packer for slaughter (including the sale of livestock from a packer to another packer).

Purchased. The term ''purchased'' means the agreement on a price, or the method for calculating a price, determined through buyer-seller interaction and agreement.

Reporting day. The term ''reporting day'' means a day on which a packer conducts business regarding livestock committed to the packer, or livestock purchased, sold, or slaughtered by the packer; the Secretary is required to make such information available to the public; and the Department of Agriculture is open to conduct business.

Secretary. The term ''Secretary'' means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

State. The term ''State'' means each of the 50 States.

Subpart B—Cattle Reporting

§ 59.100 Definitions.

The following definitions apply to this subpart.

Boxed Beef. The term ''boxed beef'' means those carlot-based portions of a beef carcass including fresh and frozen primals, subprimals, cuts fabricated from subprimals (excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for Fresh Beef Products Series 100), thin meats (e.g. inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat), and fresh and frozen ground beef, beef trimmings, and boneless processing beef.

Branded. The term ''branded'' means boxed beef cuts produced and marketed under a corporate trademark (for example, products that are marketed on their quality, yield, or breed characteristics), or boxed beef cuts produced and marketed under one of USDA's Meat Grading and Certification Branch, Certified Beef programs.

Carcass characteristics. The term ''carcass characteristics'' means the range and average carcass weight in pounds, the quality grade and yield grade (if applicable), and the average cattle dressing percentage.

Carlot-based. The term ''carlot-based'' means any transaction between a buyer and a seller destined for two or less delivery stops consisting of one or more individual boxed beef items. When used in reference to cow and bull boxed beef items, the term ''carlot-based'' means any transaction between a buyer and seller consisting of 2,000 pounds or more of one or more individual items.

Cattle committed. The term ''cattle committed'' means cattle that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the cattle.

Cattle type. The term ''cattle type'' means the following types of cattle purchased for slaughter:

(1) Fed steers;

(2) Fed heifers;

(3) Fed Holsteins and other fed dairy steers and heifers;

(4) Cows; and

(5) Bulls.

Established. The term ''established'', when used in connection with prices, means that point in time when the buyer and seller agree upon a net price.

Formula marketing arrangement.

(1) When used in reference to live cattle, the term ''formula marketing arrangement'' means the advance commitment of cattle for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

(2) When used in reference to boxed beef, the term ''formula marketing arrangement'' means the advance commitment of boxed beef by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

Forward contract.

(1) When used in reference to live cattle, the term ''forward contract'' means an agreement for the purchase of cattle, executed in advance of slaughter, under which the base price is established by reference to prices quoted on the Chicago Mercantile Exchange, or other comparable publicly available prices.

(2) When used in reference to boxed beef, the term ''forward contract'' means an agreement for the sale of boxed beef, executed in advance of manufacture,

under which the base price is established by reference to publicly available quoted prices.

Packer. The term ''packer'' means any person engaged in the business of buying cattle in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from cattle for sale or shipment in commerce, or of marketing meats or meat food products from cattle in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term ''packer'' includes only a federally inspected cattle processing plant that slaughtered an average of 125,000 head of cattle per year during the immediately preceding 5 calendar years. Additionally, in the case of a cattle processing plant that did not slaughter cattle during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant should be considered a packer under this subpart after considering its capacity.

Packer-owned cattle. The term ''packer-owned cattle'' means cattle that a packer owns for at least 14 days immediately before slaughter.

Prices for cattle. The term ''prices for cattle'' includes the price per hundredweight; the purchase type; the quantity on a live and a dressed weight basis; the estimated live weight range; the average live weight; the estimated percentage of cattle of a USDA quality grade Choice or better; beef carcass classification; any premiums or discounts associated with weight, quality grade, yield grade, or type of purchase; cattle State of origin; estimated cattle dressing percentage; and price basis as F.O.B. feedlot or delivered at the plant.

Terms of trade. The term ''terms of trade'' means, with respect to the purchase of steers and heifers for slaughter:

(1) Whether a packer provided any financing agreement or arrangement with regard to the steers and heifers;

(2) Whether the delivery terms specified the location of the producer or the location of the packer's plant;

(3) Whether the producer is able to unilaterally specify the date and time during the business day of the packer that the cattle are to be delivered for slaughter; and

(4) The percentage of steers and heifers purchased by a packer as a negotiated purchase that are scheduled to be delivered to the plant for slaughter not later than 14 days and the percentage of slaughter steers and heifers purchased by a packer as a negotiated purchase that are scheduled to be delivered to the plant for slaughter more than 14 days, but fewer than 30 days.

Type of purchase. The term ''type of purchase'' with respect to cattle, means a negotiated purchase, negotiated grid purchase, a formula market arrangement, and a forward contract.

Type of sale. The term ''type of sale'' with respect to boxed beef, means a negotiated sale, a formula market arrangement, and a forward contract.

White cow. Cow on a ration that tends to produce white fat.

§ 59.101 Mandatory daily reporting for steers and heifers.

(a) *In General*. The corporate officers or officially designated representatives of each steer and heifer packer processing plant shall report to the Secretary at least two times each reporting day not later than 10 a.m. central time and not later than 2 p.m. central time the following information, inclusive since the last reporting, categorized to clearly delineate domestic from imported market purchases as described in § 59.10(b).

(1) The prices for cattle (per hundredweight) established on that day, categorized by:

(i) The type of purchase;

(ii) The quantity of cattle purchased on a live weight basis;

(iii) The quantity of cattle purchased on a dressed weight basis;

(iv) The estimated weights of cattle purchased;

(v) An estimate of the percentage of the cattle purchased that were of a quality grade of Choice or better; and

(vi) Any premiums or discounts associated with weight, quality grade, yield grade, or other characteristic expressed in dollars per hundredweight on a dressed basis.

(2) The quantity of cattle delivered to the packer (quoted in numbers of head) on that day, categorized by:

(i) The type of purchase;

(ii) The quantity of cattle delivered on a live weight basis; and

(iii) The quantity of cattle delivered on a dressed weight basis.

(3) The quantity of cattle committed to the packer (quoted in numbers of head) as of that day, categorized by:

(i) The type of purchase;

(ii) The quantity of cattle committed on a live weight basis; and

(iii) The quantity of cattle committed on a dressed weight basis.

(4) The terms of trade regarding the cattle, as applicable.

(b) *Publication*. The Secretary shall make the information available to the public not less frequently than three times each reporting day.

§ 59.102 Mandatory daily reporting for cows and bulls.

(a) *In General*. The corporate officers or officially designated representatives of each cow and bull packer processing plant shall report to the Secretary each reporting day the following information for each cattle type, inclusive since the last reporting, categorized to clearly delineate domestic from imported market purchases as described in § 59.10(b).

(1) The base bid price (per hundredweight) intended to be paid for slaughter cow and bull carcasses on that day not later than 10 a.m. central time categorized by:

(i) Weight; and

(ii) For slaughter cows, percent lean (e.g., breaker, boner, cutter (lean)).

(2) The prices for cattle (per hundredweight) purchased during the previous day not later than 2 p.m. central time categorized by:

(i) The type of purchase;

(ii) The quantity of cattle purchased on a live weight basis;

(iii) The quantity of cattle purchased on a dressed weight basis;

(iv) The estimated weight of the cattle purchased;

(v) The quality classification; and

(vi) Any premiums or discounts associated with weight or quality expressed in dollars per hundredweight on a dressed basis.

(3) The volume of cows and bulls slaughtered the previous day.

(b) *Publication*. The Secretary shall make the information available to the public within one hour of the required reporting time on the reporting day on which the information is received from the packer.

§ 59.103 Mandatory weekly reporting for steers and heifers.

(a) *In General*. The corporate officers or officially designated representatives of each steer and heifer packer processing plant shall report to the Secretary on the first reporting day of each week, not later than 9 a.m. central time, the following information applicable to the prior slaughter week, categorized to clearly delineate domestic from imported market purchases:

(1) The quantity of cattle purchased through a negotiated basis that were slaughtered;

(2) The quantity of cattle purchased through a negotiated grid basis that were slaughtered;

(3) The quantity of cattle purchased through forward contracts that were slaughtered;

(4) The quantity of cattle delivered under a formula marketing arrangement that were slaughtered;

(5) The quantity and carcass characteristics of packer-owned cattle that were slaughtered;

(6) The quantity, basis level, basis level month, and delivery month and year for all cattle purchased through forward contracts;

(7) The range and average of intended premiums and discounts (including those associated with weight, quality grade, yield grade, or type of cattle) that are expected to be in effect for the current slaughter week.

(b) *Publication*. The Secretary shall make available to the public the information obtained under paragraph (a) of this section on the first reporting day of the current slaughter week by 10 a.m. central time.

§ 59.104 Mandatory reporting of boxed beef sales.

(a) *Daily Reporting*. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day (once by 10 a.m. central time, and once by 2 p.m. central time) the following information on total boxed beef domestic and export sales established on that day inclusive since the last reporting as described in § 59.10(b):

(1) The price for each lot of each boxed beef sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of each sale, quoted by number of pounds sold; and

(3) The information regarding the characteristics of each sale is as follows:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The grade for steer and heifer beef (e.g., USDA Prime, USDA Choice or better, USDA Choice, USDA Select, ungraded no-roll product);

(iv) The grade for cow beef or packer yield and/or quality sort for cow beef (e.g., Breakers, Boners, White Cow, Cutters (lean));

(v) The cut of beef, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;

(vi) The trim specification;

(vii) The weight range of the cut;

(viii) The product delivery period; and

(ix) The beef type (steer/heifer, dairy steer/heifer, or cow).

(b) *Publication*. The Secretary shall make available to the public the information obtained under paragraph (a) of this section not less frequently than twice each reporting day.

Subpart C—Swine Reporting

§ 59.200 Definitions.

The following definitions apply to this subpart.

Affiliate. The term ''affiliate'', with respect to a packer, means:

(1) A person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the packer;

(2) A person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the packer; and

(3) A person that directly or indirectly controls, or is controlled by or under common control with, the packer.

Applicable reporting period. The term ''applicable reporting period'' means the period of time prescribed by the prior day report, the morning report, and the afternoon report, as provided in § 59.202.

Average carcass weight. The term ''average carcass weight'' means the weight obtained by dividing the total carcass weight of the swine slaughtered at the packing plant during the applicable reporting period by the number of these same swine.

Average lean percentage. The term ''average lean percentage'' means the value equal to the average percentage of the carcass weight comprised of lean meat for the swine slaughtered during the applicable reporting period. Whenever the packer changes the manner in which the average lean percentage is calculated, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary may convert either to the carcass measurements or lean percentage of the swine of the individual packer to correlate to a common percent lean measurement.

Average net price. The term ''average net price'' means the quotient (stated per hundred pounds of carcass weight of swine) obtained by dividing the total amount paid for the swine slaughtered at a packing plant during the applicable reporting period (including all premiums and less all discounts) by the total carcass weight of the swine (in hundred pound increments).

Average sort loss. The term ''average sort loss'' means the average discount (in dollars per hundred pounds carcass weight) for swine slaughtered during the applicable reporting period, resulting from the fact that the swine did not fall within the individual packer's established carcass weight range or lot variation range.

Backfat. The term ''backfat'' means the fat thickness (in inches) measured between the third and fourth rib from the last rib, 7 centimeters from the carcass split (or adjusted from the individual packer's measurement to that reference point using an adjustment made by the Secretary) of the swine slaughtered during the applicable reporting period.

Barrow. The term ''barrow'' means a neutered male swine, with the neutering performed before the swine reached sexual maturity.

Base market hog. The term ''base market hog'' means a barrow or gilt for which no discounts are subtracted from and no premiums are added to the base price.

Base price. The term ''base price'' means the price from which no discounts are subtracted and no premiums are added.

Boars. The term ''boar'' means a sexually-intact male swine.

Bred female swine. The term ''bred female swine'' means any female swine, whether a sow or gilt, that has been mated or inseminated, or has been confirmed, to be pregnant.

Formula price. The term ''formula price'' means a price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Gilt. The term ''gilt'' means a young female swine that has not produced a litter.

Hog Class. The term ''hog class'' means, as applicable, barrows or gilts; sows; or boars or stags.

Inferior swine. The term ''inferior swine'' means swine that are discounted in the market place due to light-weight, health, or physical conditions that affects their value.

Loin depth. The term ''loin depth'' means the muscle depth (in inches) measured between the third and fourth ribs from the last rib, 7 centimeters from the carcass split (or adjusted from the individual packer's measurement to that reference point using an adjustment made by the Secretary) of the swine slaughtered during the applicable reporting period.

Net price. The term ''net price'' means the total amount paid by a packer to a producer (including all premiums, less all discounts) per hundred pounds of carcass weight of swine delivered at the plant. The total amount paid shall include any sum deducted from the price (per hundredweight) paid to a producer that reflects the repayment of a balance owed by the producer to the packer or the accumulation of a balance

to later be repaid by the packer to the producer. The total amount paid shall exclude any sum earlier paid to a producer that must be repaid to the packer.

Noncarcass merit premium. The term ''noncarcass merit premium'' means an increase in the base price of the swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium is known before the sale and delivery of the swine.

Other market formula purchase. The term ''other market formula purchase'' means a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or a pork product. The term ''other market formula purchase'' includes a formula purchase in a case which the price formula is based on 1 or more futures or options contracts.

Other purchase arrangement. The term ''other purchase arrangement'' means a purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase; and does not involve packer-owned swine.

Packer. The term ''packer'' means any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from swine in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term ''packer'' includes only a federally inspected swine processing plant that slaughtered an average of 100,000 head of swine per year during the immediately preceding 5 calendar years and a person that slaughtered an average of 200,000 head of sows, boars, or combination thereof per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant or person that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant or person should be considered a packer under this subpart after considering its capacity.

Packer-owned swine. The term ''packer-owned swine'' means swine that a packer (including a subsidiary or affiliate of the packer) owns for at least 14 days immediately before slaughter.

Packer-sold swine. The term ''packer-sold swine'' means the swine that are owned by a packer (including a subsidiary or affiliate of the packer) for more than 14 days immediately before sale for slaughter; and sold for slaughter to another packer.

Pork. The term ''pork'' means the meat of a porcine animal.

Pork product. The term ''pork product'' means a product or byproduct produced or processed in whole or in part from pork.

Purchase data. The term ''purchase data'' means all of the applicable data, including base price and weight (if purchased live), for all swine purchased during the applicable reporting period, regardless of the expected delivery date of the swine, reported by:

(1) Hog class;

(2) Type of purchase; and

(3) Packer-owned swine.

Slaughter data. The term ''slaughter data'' means all of the applicable data for all swine slaughtered by a packer during the applicable reporting period, regardless of whether the price of the swine was negotiated or otherwise determined, reported by:

(1) Hog class;

(2) Type of purchase; and

(3) Packer-owned swine.

Sow. The term ''sow'' means an adult female swine that has produced 1 or more litters.

Stag. The term ''stag'' means a male swine that was neutered after reaching sexual maturity.

Swine. The term ''swine'' means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

Swine committed. The term ''swine committed'' means swine scheduled and delivered to a packer within the 14-day period beginning on the date of an agreement to sell the swine.

Swine or pork market formula purchase. The term ''swine or pork market formula purchase'' means a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or a pork product, other than a future or option for swine, pork, or a pork product.

Type of purchase. The term ''type of purchase'', with respect to swine, means:

(1) A negotiated purchase;

(2) Other market formula purchase;

(3) A swine or pork market formula purchase; and

(4) Other purchase arrangement.

§ 59.201 General reporting provisions.

(a) *Packer-Owned Swine*. Information required under this section for packer-owned swine shall include quantity and carcass characteristics, but not price.

(b) *Type of Purchase*. If information regarding the type of purchase is required under this section, the information shall be reported according to the numbers and percentages of each type of purchase comprising:

(1) Packer-sold swine; and

(2) All other swine.

§ 59.202 Mandatory daily reporting for barrows and gilts.

(a) *Prior Day Report*. The corporate officers or officially designated representatives of each packer that processes barrows and gilts shall report to the Secretary for each business day of the packer not later than 7 a.m. central time on each reporting day information regarding all barrows and gilts purchased or priced, during the prior business day of the packer, and not later than 9 a.m. central time on each reporting day information regarding all barrows and gilts slaughtered, excluding inferior swine, as specified in § 59.10(b):

(1) All purchase data, reported by lot, including:

(i) The total number of barrows and gilts purchased;

(ii) The total number of barrows and gilts scheduled for delivery to a packer for slaughter;

(iii) The base price and weight for all barrows and gilts purchased on a live weight basis; and

(iv) The base price and premiums and discounts paid for carcass characteristics for all barrows and gilts purchased on a carcass basis for which a price has been established. For barrows and gilts that were not priced, this information shall be reported on the next prior day report after the price is established.

(2) The following slaughter data for the total number of barrows and gilts slaughtered:

(i) The average net price;

(ii) The average carcass weight;

(iii) The average sort loss;

(iv) The average backfat;

(v) The average loin depth;

(vi) The average lean percentage; and

(vii) Total quantity slaughtered.

(3) Packer purchase commitments, which shall be equal to the number of barrows and gilts scheduled for delivery to a packer for slaughter for each of the next 14 calendar days.

(4) The Secretary shall publish the information obtained in paragraph (a) of this section in a prior day report not later than 8 a.m. central time for all barrows and gilts purchased and 10 a.m. central time for all barrows and gilts slaughtered on the reporting day on which the information is received from the packer. In addition, the Secretary shall publish a net price distribution for all barrows and gilts slaughtered on the previous day not later than 3 p.m. central time.

(b) *Morning Report.* The corporate officers or officially designated representatives of each packer processing plant that processes barrows and gilts shall report to the Secretary not later than 10 a.m. central time each reporting day as described in § 59.10(b):

(1) The packer's best estimate of the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, expected to be purchased throughout the reporting day through each type of purchase;

(2) The total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased up to that time of the reporting day through each type of purchase;

(3) All purchase data for base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(4) All purchase data for base market hogs purchased through each type of purchase other than negotiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined.

(5) The Secretary shall publish the information obtained in paragraph (b) of this section in the morning report as soon as practicable, but not later than 11 a.m. central time, on each reporting day.

(c) *Afternoon Report.* The corporate officers or officially designated representatives of each packer processing plant that processes barrows and gilts shall report to the Secretary not later than 2 p.m. central time each reporting day as described in § 59.10(b):

(1) The packer's best estimate of the total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine expected to be purchased throughout the reporting day through each type of purchase;

(2) The total number of barrows and gilts, and barrows and gilts that qualify as packer-owned swine, purchased up to that time of the reporting day through each type of purchase;

(3) The base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(4) The base price paid for all base market hogs purchased through each type of purchase other than negotiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined.

(5) The Secretary shall publish the information obtained in paragraph (c) of this section in the afternoon report as soon as practicable, but not later than 3 p.m. central time, on each reporting day.

§ 59.203 Mandatory daily reporting for sows and boars.

(a) *Prior Day Report.* The corporate officers or officially designated representatives of each packer of sows and boars shall report to the Secretary for each business day of the packer not later than 7 a.m. central time on each reporting day information regarding all sows and boars purchased or priced, excluding inferior swine, during the prior business day of the packer all purchase data, reported by lot, including:

(1) The total number of sows and boars purchased divided into at least three weight groups as specified by the Secretary;

(2) The average price paid by each purchase type for all sows in each weight class specified by the Secretary; and

(3) The average price paid by each purchase type for all boars in each weight class specified by the Secretary.

(4) The packer is required to report only the volume of sows and boars that qualify as packer owned swine and shall omit packer owned sows and boars from all average price calculations.

(b) *Publication.* The Secretary shall publish the information obtained in paragraph (a) of this section as soon as practicable, but not later than 8 a.m. central time, on the reporting day on which the information is received from the packer.

§ 59.204 Mandatory weekly reporting for swine.

(a) *Weekly Noncarcass Merit Premium Report.* Not later than 4 p.m. central time in accordance with § 59.10(b) on the first reporting day of each week, the corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary a noncarcass merit premium report that lists:

(1) Each category of standard noncarcass merit premiums used by the packer in the prior slaughter week; and

(2) The dollar value (in dollars per hundred pounds of carcass weight) paid to producers by the packer, by category.

(b) *Premium List.* A packer shall maintain and make available to a producer, on request, a current listing of the dollar values (per hundred pounds of carcass weight) of each noncarcass merit premium used by the packer during the current or the prior slaughter week.

(c) *Publication.* The Secretary shall publish the information obtained under this subsection as soon as practicable, but not later than 5 p.m. central time, on the first reporting day of each week.

Subpart D—Lamb Reporting

§ 59.300 Definitions.

The following definitions apply to this subpart.

Boxed Lamb. The term ''boxed lamb'' means those carlot-based portions of a lamb carcass including fresh primals, subprimals, cuts fabricated from subprimals excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for Fresh Lamb and Mutton Series 200, and thin meats (e.g., inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground lamb, lamb trimmings, and boneless processing lamb not older than 7 days from date of manufacture; frozen primals, subprimals, cuts fabricated from subprimals, and thin meats not older than 180 days from date of manufacture; and frozen ground lamb, lamb trimmings, and boneless processing lamb not older than 90 days from date of manufacture.

Branded. The term ''branded'' means boxed lamb cuts produced and marketed under a corporate trademark (for example, products that are marketed on their quality, yield, or breed characteristics), or boxed lamb cuts produced and marketed under one of USDA's Meat Grading and Certification Branch, Certified programs.

Carcass characteristics. The term ''carcass characteristics'' means the range and average carcass weight in pounds, the quality grade and yield grade (if applicable), and the lamb average dressing percentage.

Carlot-based. The term ''carlot-based'' means any transaction between a buyer and a seller destined for three or less delivery stops consisting of any combination of carcass weights. When used in reference to boxed lamb cuts the term ''carlot-based'' means any transaction between a buyer and seller consisting of 1,000 pounds or more of one or more individual boxed lamb items.

Established. The term ''established'', when used in connection with prices, means that point in time when the buyer and seller agree upon a net price.

Formula marketing arrangement.

(1) When used in reference to live lambs, the term ''formula marketing arrangement'' means the advance commitment of lambs for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

(2) When used in reference to boxed lamb, the term ''formula marketing arrangement'' means the advance commitment of boxed lamb by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

Forward contract.

(1) When used in reference to live lambs, the term ''forward contact'' means an agreement for the purchase of lambs, executed in advance of slaughter, under which the base price is established by reference to publicly available prices.

(2) When used in reference to boxed lamb, the term ''forward contract'' means an agreement for the sale of boxed lamb, executed in advance of manufacture, under which the base price is established by reference to publicly available quoted prices.

Importer. The term ''importer'' means any person engaged in the business of importing lamb meat products who takes ownership of such lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years, if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

Packer. The term ''packer'' means any person engaged in the business of buying lambs in commerce for purposes of slaughter, of manufacturing or preparing meat products from lambs for sale or shipment in commerce, or of marketing meats or meat products from lambs in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term includes only a federally inspected lamb processing plant which slaughtered or processed the equivalent of an average of 75,000 head of lambs per year during the immediately preceding 5 calendar years. Additionally, the term includes a lamb processing plant that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity.

Packer-owned lambs. The term ''packer-owned lambs'' means lambs that a packer owns for at least 14 days immediately before slaughter.

Type of purchase. The term ''type of purchase'' means a negotiated purchase, a formula market arrangement, and a forward contract.

Type of sale. The term ''type of sale'' with respect to boxed lamb, means a negotiated sale, a formula market arrangement, and a forward contract.

Yield grade lamb carcass reporting. The term ''yield grade lamb carcass reporting'' means if the lot includes 80 percent or more of one yield grade, the lot will be considered a single yield grade lot. If the lot contains less than 80 percent of one yield grade, the lot will be considered a mixed grade lot and all yield grades comprising 10 percent or more will be used to describe the lot.

§ 59.301 Mandatory Daily Reporting for Lambs.

(a) *In General*. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least once each reporting day not later than 2 p.m. central time the prices for lambs (per hundredweight) established on that day as F.O.B. feedlot or delivered at the plant, categorized to clearly delineate domestic from imported market purchases as described in § 59.10(b) and categorized by:

(1) The type of purchase;

(2) The class of lamb;

(3) The quantity of lambs purchased on a live weight basis;

(4) The quantity of lambs purchased on a dressed weight basis;

(5) A range and average of estimated live weights of lambs purchased;

(6) An estimate of the percentage of the lambs purchased that were of a quality grade of Choice or better;

(7) Any premiums or discounts associated with weight, quality grade, yield grade, or any type of purchase;

(8) Lamb state of origin;

(9) The pelt type; and

(10) The estimated lamb dressing percentage.

(b) *Publication*. The Secretary shall make the information available to the public not less than once each reporting day.

§ 59.302 Mandatory weekly reporting for lambs.

(a) *In General*. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary the following information applicable to the prior slaughter week contained in paragraphs (a)(1) through (a)(5) and (a)(7) of this section not later than 9 a.m. central time on the second reporting day of the current slaughter week, and the following information applicable to the prior slaughter week contained in paragraph (a)(6) of this section not later than 9 a.m. central time on the first reporting day of the current slaughter week categorized to clearly delineate domestic from imported market purchases:

(1) The quantity of lambs purchased through a negotiated purchase that were slaughtered;

(2) The quantity of lambs purchased through forward contracts that were slaughtered;

(3) The quantity of lambs delivered under a formula marketing arrangement that were slaughtered;

(4) The quantity and carcass characteristics of packer-owned lambs that were slaughtered;

(5) The quantity, basis level, and delivery month for all lambs purchased through forward contracts;

(6) The following information applicable to the current slaughter week. The range and average of intended premiums and discounts (including those associated with weight, quality grade, yield grade, or type of lamb) that are expected to be in effect for the current slaughter week; and

(7) The following information for lambs purchased through a formula marketing arrangement and slaughtered during the prior slaughter week, categorized to clearly delineate domestic from imported market purchases:

(i) The quantity (quoted in both numbers of head and pounds) of lambs;

(ii) The weighted average price paid for a carcass, including applicable premiums and discounts;

(iii) The range of premiums and discounts paid;

(iv) The weighted average of premiums and discounts paid; and

(v) The range of prices paid.

(b) *Publication*. The Secretary shall make available to the public the information obtained in paragraphs (a)(1) through (a)(5) and (a)(7) of this section on the second reporting day of the current slaughter week and information obtained in paragraph (a)(6) of this section on the first reporting day of the current slaughter week.

§ 59.303 Mandatory reporting of lamb carcasses and boxed lamb.

(a) *Daily Reporting of Lamb Carcass Transactions*. The corporate officers or

officially designated representatives of each packer shall report to the Secretary each reporting day the following information on total carlot-based lamb carcass transactions not later than 3 p.m. central time in accordance with § 59.10(b):

(1) The price for each lot of each lamb carcass transaction, quoted in dollars per hundredweight on an F.O.B. plant basis;

(2) The quantity for each lot of each transaction, quoted by number of carcasses sold and purchased; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of transaction;

(ii) The USDA quality grade of lamb;

(iii) The USDA yield grade;

(iv) The estimated weight range of the carcasses; and

(v) The product delivery period.

(b) *Daily Reporting of Domestic Boxed Lamb Sales.* The corporate officers or officially designated representatives of each packer shall report to the Secretary each reporting day the following information on total domestic boxed lamb cut sales not later than 2:30 p.m. central time as described in § 59.10(b):

(1) The price for each lot of each boxed lamb cut sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of each sale, quoted by product weight sold; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The USDA quality grade of lamb;

(iv) The cut of lamb, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;

(v) USDA yield grade, if applicable;

(vi) The product state of refrigeration;

(vii) The weight range of the cut; and

(viii) The product delivery period.

(c) *Weekly Reporting of Imported Boxed Lamb Sales.* The corporate officers or officially designated representatives of each lamb importer shall report to the Secretary on the first reporting day of each week the following information applicable to the prior week for imported boxed lamb cut sales not later than 10 a.m. central time:

(1) The price for each lot of a boxed lamb cut sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of a transaction, quoted by product weight sold; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The cut of lamb, referencing the most recent version of the Institutional Meat Purchase Specifications (IMPS), when applicable;

(iv) The product state of refrigeration;

(v) The weight range of the cut; and

(vi) The product delivery period.

(d) *Publication.* The Secretary shall make available to the public the information required to be reported in paragraphs (a) and (b) of this section not less frequently than once each reporting day and the information required to be reported in paragraph (c) of this section on the first reporting day of the current slaughter week.

Subpart E—OMB Control Number

§ 59.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements of this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0186.

Dated: March 2, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

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

Appendix A—Cattle Mandatory Reporting Forms

The following 7 forms visually represent the mandatory cattle and boxed beef market information that is required to be reported to the Agricultural Marketing Service.

Cattle

LS–113—Live Cattle Daily Report (Current Established Prices)
LS–114—Live Cattle Daily Report (Committed and Delivered Cattle)
LS–115—Live Cattle Weekly Report
LS–117—Cattle Premiums and Discounts Weekly Report
LS–131—Cow/Bull Plant Delivered Bids (Dressed Basis)
LS–132—Live Cow/Bull Daily Purchase Report
LS–126—Boxed Beef Daily Report

Appendix B—Swine Mandatory Reporting Forms

The following 3 forms visually represent the mandatory swine market information that is required to be reported electronically to the Agricultural Marketing Service.

Swine

LS–118—Swine Prior Day Report
LS–119—Swine Daily Report
LS–120—Swine Noncarcass Merit Premium Weekly Report

Appendix C—Lamb Mandatory Reporting Forms

The following 6 forms visually represent the mandatory lamb market information that is required to be reported electronically to the Agricultural Marketing Service.

Lamb

LS–121—Live Lamb Daily Report (Current Established Prices)
LS–123—Live Lamb Weekly Report
LS–124—Live Lamb Weekly Report (Formula Purchases)
LS–125—Lamb Premiums and Discounts Report
LS–128—Boxed Lamb Report
LS–129—Lamb Carcass Report

Appendix D—Mandatory Reporting Guideline

The following reporting guidelines may be used by persons required to report electronically transmitted mandatory market information to the Agricultural Marketing Service.

The first 10 fields of each reporting form provide the following information: Identification number (plant establishment number or importer ID number), company name (name of parent company), plant street address (street address for plant), plant city (city where plant is located), plant state (state where plant is located), plant zip code (zip code where plant is located), contact name (the name of the corporate representative contact at the plant), phone number (full phone number for the plant including area code), reporting date (date the information was submitted (mm/dd/yyyy)), and reporting time, if applicable (the submission time corresponding to the 10 a.m. and the 2 p.m. reporting requirements). The reporting time requirement is only applicable to forms LS–113—Live Cattle Daily Report (current established prices), LS–114—Live Cattle Daily Report (Committed and Delivered Cattle), LS–126—Boxed Beef Daily Report, LS–131—Cow/Bull Plant Delivered Bids (Dressed Basis) (10 a.m. submission only), LS–132—Live Cow/Bull Daily Purchase Report, and LS–119—Swine Daily Report.

(a) *Cattle Mandatory Reporting Forms.* (See Appendix E for samples.)

(1) LS–113—Live Cattle Daily Report (current established prices).

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Source (12). Enter ''1'', domestic, if cattle were purchased inside of the 50 States, or ''2'', imported, if cattle were purchased outside of the 50 States.

(iii) Purchase type code (13). Enter the code that describes the type of purchase.

(iv) Class code (14). Enter the code that best describes the type of cattle.

(v) Selling basis (15a–b). For 15a, enter ''1'' if cattle were purchased on a live basis or ''2'' if cattle were purchased on a dressed basis. For 15b, enter ''1'' if cattle are shipped on an FOB feedlot basis or ''2'' if cattle are delivered at the plant.

(vi) Head count (16). Enter the quantity of cattle in the lot in number of head.

(vii) Estimated average weight (17). Enter the estimated average weight of the lot in pounds.

(viii) Average price (18). Enter the price established on that day for the lot in dollars per hundredweight.

(I) For negotiated purchases, enter the price that was agreed upon.

(II) For formula purchases, enter the base price when established (with estimated grading information if not yet known). Then enter the final net price with all actual grading information when it is known.

(III) For forward contract purchases, enter the base price when established (with estimated grading information if not yet known). Then enter the final net price paid on the contract with actual grading information.

(V) For negotiated grid purchases, enter the base price when established (with estimated grading information if not yet known). Then enter the final net price with all actual grading information.

(ix) Percent Choice or better (19). Enter the percentage of the number of cattle in the lot of a quality grade of Choice or better.

(x) Classification code (20). Enter the code which best describes the quality of the majority of the cattle in the lot.

(xi) Dressing percentage (21). Enter an average dressing percentage for the cattle in the lot. For negotiated purchases, enter an estimate. For all other purchase types, enter the actual average dressing percentage.

(xii) Origin (22). Enter the 2-letter postal abbreviation for the State in which the cattle were fed to slaughter weight. For imported cattle enter ''CN'' for Canada.

(xiii) Premiums and discounts paid (23a–h). Enter the total net value of the adjustment for the lot (in dollars per hundredweight) for any premiums associated with weight, quality, yield or other expressed as a positive value and for any discounts associated with weight, quality, yield or other expressed as a negative value in parenthesis.

(xiv) Terms of Trade (24a–d).

(I) Packer financing (24a). Enter ''1'' (yes) or ''2'' (no) in response to: ''Did packer provide financing agreement or arrangement with regards to the cattle?''

(II) Delivery location (24b). Enter ''1'' if delivery terms specify producer location, ''2'' if they specify packer's plant location.

(III) Delivery Date (24c). Enter ''1'' if producer sets date of delivery for slaughter unilaterally; otherwise enter ''2'' for packer.

(IV) Delivered (24d). Enter ''1'' if negotiated purchased cattle are to be delivered for slaughter 14 or less days from the committed, purchased, or priced date. Enter ''2'' if they are to be delivered for slaughter from 15 to 30 days from the date the cattle were committed, purchased, or priced.

(2) LS–114—Live Cattle Daily Report (committed and delivered cattle).

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Purchasing basis (12). Enter ''1'' if cattle are delivered or ''2'' if cattle are committed.

(iii) Source (13). Enter ''1'', domestic, if cattle are purchased within the 50 States or ''2'', imported, if cattle are purchased outside of the 50 States.

(iv) Purchase type code (14). Enter the code that best describes the type of purchase.

(v) Class Code (15). Enter the code that best describes the type of cattle in the lot.

(vi) Selling basis (16). Enter ''1'' if cattle were purchased on a live basis or a ''2'' if cattle were purchased on a dressed basis.

(vii) Head count (17). Enter the quantity of cattle in the lot in number of head.

(viii) Origin (18). Enter the 2-letter postal abbreviation for the State in which the cattle were fed to slaughter weight. For imported cattle, enter ''CN'' for Canada.

(ix) Terms of Trade (19a–d). Enter when applicable, otherwise leave blank.

(I) Packer financing (19a). Enter ''1'' (yes) or ''2'' (no) in response to: ''Did packer provide financing agreement or arrangement with regards to the cattle?''

(II) Delivery location (19b). Enter ''1'' if delivery terms specify producer location, ''2'' if they specify packer's plant location.

(III) Delivery Date (19c). Enter ''1'' if producer sets date of delivery for slaughter unilaterally; otherwise enter ''2'' for packer.

(IV) Delivered (19d). Enter ''1'' if negotiated purchased cattle are to be delivered for slaughter 7 or less days from the committed, purchased, or priced date. Enter ''2'' if they are to be delivered for slaughter from 8 to 14 days from the date the cattle were committed, purchased, or priced.

(3) LS–115—Live Cattle Weekly Report.

(i) Packer-Owned lot identification (11). Enter code used to identify the lot of packer-owned cattle to the packer.

(ii) Packer-Owned source (12). Enter ''1'', domestic, if packer-owned cattle are from within the 50 States or ''2'', imported, if cattle are from outside of the 50 States.

(iii) Packer-Owned head count (13). Enter the quantity of packer-owned cattle in the lot in number of head.

(iv) Packer-Owned actual carcass weight range (14). Enter the actual average carcass weight of the lot in pounds.

(v) Packer-Owned average dressing percentage (15). Enter the average dressing percentage of the lot of packer-owned cattle.

(vi) Percentage yield grade 3 or better (16). Enter the percentage of packer-owned cattle in the lot of a yield grade of 3 or better.

(vii) Quality grade percentage (17). Enter the percentage of packer-owned cattle in the lot of a quality grade of Choice or better.

(viii) Prior week slaughtered cattle head counts (18–25). Enter the total number of head of cattle slaughtered for the prior week that were purchased through forward contracts, the total number of head for cattle purchased through formula arrangements, the total number of head of cattle purchased through negotiated cash, and the total number of head purchased through negotiated grids, categorized by domestic or imported sources. Enter this information once per each week's submission.

(ix) Forward contract purchases lot identification (26). Enter code used to identify forward contracted cattle to the packer.

(x) Forward contract purchases head count (27). Enter quantity of forward contracted cattle in the lot in number of head.

(xi) Forward contract purchases basis level (28). Enter the agreed upon adjustment to a future price to establish the final price of the forward contracted cattle in dollars per one hundred pounds.

(xii) Forward contract purchases delivery month (29). Enter the delivery month of the cattle purchased through forward contracts as a 3-letter abbreviation.

(xiii) Forward contract purchases delivery year (30).

(xiv) Forward contract purchases basis level month (31). Enter the basis month which the contract was based off of. Use 3-letter abbreviation.

(4) LS–117—Cattle Premiums and Discounts Weekly Report.

(i) Enter the premiums and discounts (in dollars per hundredweight) expected to be in effect for the current slaughter week for each applicable category of premium and discount (11–34). For ''other'' categories (35–39), provide a brief description of the basis for the premium/discount along with the value of the premium/discount. Enter negative values in parenthesis.

(5) LS–131—Cow/Bull Plant Delivered Bids.

Enter the plant delivered bids the plant expects to have in effect for that day in dollars per cwt. For each category.

(6) LS–132—Live Cow/Bull Daily Purchase report.

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Source (12). Enter ''1'', domestic, if cattle were purchased inside of the 50 States, or ''2'', imported, if cattle were purchased outside of the 50 States.

(iii) Purchase type code (13). Enter the code that describes the type of purchase.

(iv) Class code (14). Enter the code that best describes the type of cattle.

(v) Selling basis (15a–b). For 15a, enter ''1'' if cattle were purchased on a live basis or ''2'' if cattle were purchased on a dressed basis. For 15b, enter ''1'' if cattle are shipped on an FOB feedlot basis or ''2'' if cattle are delivered at the plant.

(vi) Head count (16). Enter the quantity of cattle in the lot in number of head.

(vii) Estimated average weight (17). Enter the estimated average weight of the lot in pounds.

(viii) Average price (18). Enter the price established on that day for the lot in dollars per hundredweight.

(I) For negotiated purchases, enter the final net price that was paid.

(II) For formula purchases, enter the base price when established (with estimated grading info if not yet known). Then enter the final net price with all actual grading information when it is known.

(III) For forward contract purchases, enter the base price when established (estimated grading info if not yet known. Then enter the final net price paid on the contract with actual grading information.

(V) For negotiated grid purchases, enter the base price when established (estimated grading info if not yet known). Then enter the final net price with all actual grading information.

(ix) Classification code (19). Enter the code which best describes the quality of the majority of the cattle in the lot.

(x) Origin (20). Enter the 2-letter postal abbreviation for the State in which the cattle were fed to slaughter weight. For imported cattle enter ''CN'' for Canada.

(xi) Premiums and discounts paid (21a–f). Enter the total net value of the adjustment for

the lot (in dollars per hundredweight) for any premiums associated with weight, quality, yield or other expressed as a positive value and for any discounts associated with weight, quality, yield or other expressed as a negative value in parenthesis.

(7) LS–126—Boxed Beef Daily Report. For lots comprising multiple items, provide information for each item in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Destination (12). Enter ''1'', domestic, for product shipped within the 50 States; or ''2'', exported, for product shipped overseas; or ''3'', exported, for product shipped NAFTA (Canada or Mexico).

(iii) Purchase type code (13). Enter the code corresponding to the sale type of the lot of boxed beef.

(iv) Delivery period code (14). Enter the code corresponding to the delivery time period of the lot of boxed beef.

(v) Refrigeration (15). Enter ''1'' if the product is sold in a fresh condition with an age of 14 days or less from the date of manufacture, ''2'' if the product is sold in a frozen condition, or ''3'' if the product is sold in a fresh condition with an age of more than 14 days from the date of manufacture.

(vi) Class code (16). Enter the code that best describes the class of cattle from which the boxed beef was produced.

(vii) Classification code (17). Enter the code corresponding to the grade of the boxed beef.

(viii) Beef cut (18a–b). Enter the numerical code corresponding to the Institutional Meat Purchase Specifications (IMPS) (3 to 4 characters) (18a) or the internal corporate descriptor used to identify the product (18b). Descriptors must be entered consistently for all submissions.

(ix) Trim spec code (19). Enter the code corresponding to the trim level of the boxed beef.

(x) Weight (20). Enter the code corresponding to the relative weight of the product. Where weight is a factor, enter ''1'' to signify the lighter weight range, ''2'' to signify the middle weight range, or ''3'' to signify the heavier weight range. Where weight is not a factor, enter ''4'' to signify all weights or mixed.

(xi) Total product weight (21). Enter the total weight of the boxed beef cut in the lot in pounds.

(xii) Price (22). Enter the price received for each boxed beef cut in the lot in dollars per one hundred pounds, FOB Plant basis.

(xiii) USDA Certified schedule code (23). Enter the code for the USDA Certified Program schedule, if applicable (e.g. G1, G2, etc.); otherwise leave blank.

(xiv) Branded product code (24a–b). Enter the quality grade code (24a) and the yield grade code (24b) that best describes the brand. Leave blank if not applicable.

(b) *Swine Mandatory Reporting Forms.* (see Appendix E for samples)

(1) LS–118—Swine Prior Day Report.

(i) Slaughtered swine lot identification (11). Enter code used to identify the lot of slaughtered swine to the packer.

(ii) Slaughtered swine class code (12). Enter the code that best describes the type of slaughtered swine in the lot.

(iii) Slaughtered swine purchase type code (13). Enter the code that describes the type of purchase for the slaughtered swine in the lot.

(iv) Slaughtered swine head count (14). Enter the quantity of slaughtered swine in the lot in number of head.

(v) Slaughtered swine base price (15). Enter the base price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(vi) Slaughtered swine average net price (16). Enter the average net price established on that day for the lot of slaughtered swine in dollars per one hundred pounds.

(vii) Slaughtered swine average live weight (17). Enter the average live weight of the lot of swine in pounds if slaughtered swine were purchased on a live basis, otherwise leave blank.

(viii) Slaughtered swine average carcass weight (18). Enter the average carcass weight of the lot of slaughtered swine in pounds.

(ix) Slaughtered swine average sort loss (19). Enter the average sort loss for the lot of slaughtered swine in dollars per one hundred pounds.

(x) Slaughtered swine average backfat (20). Enter the average backfat measurement for the lot of slaughtered swine in inches rounded to the nearest tenth of an inch.

(xi) Slaughtered swine average loin depth (21). Enter the average loin depth measurement for the lot of slaughtered swine in inches rounded to the nearest tenth of an inch.

(xii) Slaughtered swine average lean percentage (22). Enter the average lean percentage for the lot of slaughtered swine.

(xiii) Purchased swine lot identification (23). Enter code used to identify the lot of purchased swine to the packer.

(xiv) Purchased swine ownership code (24). Enter code which best describes the source of the purchased swine whether packer-owned, purchased from another packer, or all other swine.

(xv) Purchased swine class code (25). Enter the code that best describes the type of purchased swine.

(xvi) Purchased swine purchase type code (26). Enter the code that describes the type of purchase for the purchased swine.

(xvii) Purchased swine head count (27). Enter the quantity of purchased swine in the lot.

(xviii) Purchased swine average live weight (28). Enter the average live weight of the lot of swine in pounds if swine were purchased on a live basis, otherwise leave blank.

(xix) Purchased swine base price (29). Enter the base price established on that day for the lot of purchased swine in dollars per one hundred pounds.

(xx) Purchased swine origin (30). Enter the 2-letter postal abbreviation for the State in which the swine were fed to slaughter weight.

(xxi) Scheduled swine (31–44). Enter the number of head of purchase commitment swine that were scheduled for delivery for each of the next 14 days. Enter the total quantity currently scheduled for each day at the time of reporting for each submission.

(2) LS–119—Swine Daily Report.

(i) Purchased swine lot identification (11). Enter code used to identify the lot of purchased swine to the packer.

(ii) Purchased swine purchase type code (12). Enter the code that describes the type of purchase for the swine in the lot.

(iii) Purchased swine average live weight (13). Enter the average live weight of the lot of swine in pounds if swine were purchased on a live basis, otherwise leave blank.

(iv) Purchased swine class code (14). Enter the code that best describes the type of swine in the lot.

(v) Purchased swine head count (15). Enter the quantity of swine in the lot in number of head.

(vi) Purchased swine base price (16). Enter the base price established on that day for the lot of swine in dollars per one hundred pounds.

(vii) Purchased swine origin (17). Enter the 2-letter postal abbreviation for the State in which the swine were fed to slaughter weight.

(viii) Packer-sold swine purchases (18–25). Enter the best estimate of the total number of packer-sold swine expected to be purchased throughout the reporting day for each purchase type and the total number of packer-sold swine purchased up to that time of the reporting day for each purchase type.

(ix) All other swine purchases (26–33). Enter the best estimate of the total number of all other swine expected to be purchased throughout the reporting day for each purchase type and the total number of all other swine purchased up to that time of the reporting day for each purchase type.

(3) LS–120—Swine Noncarcass Merit Premium Weekly Report.

Enter the standard noncarcass merit premiums used during the prior slaughter week (11–15) in dollars per hundredweight. If a range of standard noncarcass merit premiums was used, enter the low side of the range (a) and the high side of the range (b). If only one value was used, enter the same number in (a) and (b). If no value for the specified merit was used, leave blank. For ''other'' categories (16–20), provide a brief description of the basis for the premium along with the value of the premium.

(c) *Lamb Mandatory Reporting Forms.* (See Appendix E for samples)

(1) LS–121—Live Lamb Daily Report (current established prices).

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Source (12). Enter ''1'', domestic, if lambs were purchased inside of the 50 States, or ''2'', imported, if lambs were purchased outside of the 50 States.

(iii) Purchase type code (13). Enter the code that describes the type of purchase.

(iv) Class code (14). Enter the code that best describes the type of lambs.

(v) Selling basis (15a–b). For 15a, enter ''1'' if lambs were purchased on a live basis or ''2'' if lambs were purchased on a dressed basis. For 15b, enter ''1'' if lambs are shipped on an FOB feedlot basis or ''2'' if lambs are delivered at the plant.

(vi) Head count (16). Enter the quantity of lambs in the lot in number of head.

(vii) Weight range (17a & 17b). Enter the lowest (17a) and highest (17b) weights for lambs in the lot in pounds.

(viii) Estimated average weight (18). Enter the estimated average weight of the lot in pounds.

(ix) Average price (19). Enter the price established on that day for the lot in dollars per hundredweight.

(I) For negotiated purchases, enter the final (net) price paid.

(II) For formula purchases, enter the net price.

(III) For forward contract purchases, enter the final (net) price paid.

(x) Percent Choice or better (20). Enter the percentage of the number of lambs in the lot of a quality grade of Choice or better.

(xi) Classification code (21). Enter the code which best describes the quality of the majority of the lambs in the lot.

(xii) Dressing percentage (22). Enter an average dressing percentage for the lambs in the lot. For negotiated purchases, enter an estimate. For all other purchase types, enter the actual average dressing percentage.

(xiii) Origin (23). Enter the 2-letter postal abbreviation for the State in which the lambs were fed to slaughter weight. Enter ''CN'' if lambs originate from Canada.

(xiv) Pelt Code (24). Enter the code that best describes the type of pelt for the majority of lambs in the lot.

(xv) Premiums and discounts paid (25a–f). Enter the total net value of the adjustment for the lot (in dollars per hundredweight) for any premiums associated with weight, quality, or yield expressed as a positive value and for any discounts associated with weight, quality, or yield expressed as a negative value in parenthesis.

(2) LS–123—Live Lamb Weekly Report.

(i) Packer-Owned lot identification (11). Enter code used to identify the lot of packer-owned lambs to the packer.

(ii) Packer-Owned source (12). Enter ''1'', domestic, if packer-owned lambs are from within the 50 States or ''2'', imported, if lambs are from outside of the 50 States.

(iii) Packer-Owned head count (13). Enter the quantity of packer-owned lambs in the lot in number of head.

(iv) Packer-Owned actual carcass weight range (14a & 14b). Enter the lowest (14a) and highest (14b) actual carcass weights for lambs in the lot in pounds.

(v) Packer-Owned actual average carcass weight (15). Enter the actual average carcass weight of the lot of packer-owned lambs in pounds.

(vi) Packer-Owned average dressing percentage (16). Enter the average dressing percentage of the lot of packer-owned lambs.

(vii) Percentage yield grade 3 or better (17). Enter the percentage of packer-owned lambs in the lot of a yield grade of 3 or better.

(viii) Quality grade percentage (18–). Enter the percentage of packer-owned lambs in the lot of a quality grade of Choice or better.

(ix) Prior week slaughtered lambs head counts (19–24). Enter the total number of head of lambs slaughtered for the prior week that were purchased through forward contracts, the total number of head for lambs purchased through formula arrangements, and the total number of head of lambs purchased through negotiated cash, categorized by domestic or imported sources. Enter this information once per each week's submission.

(x) Forward contract purchases lot identification (25). Enter code used to identify forward contracted lambs to the packer.

(xi) Forward contract purchases head count (26). Enter quantity of forward contracted lambs in the lot in number of head.

(xii) Forward contract purchases basis level (27). Enter the agreed upon adjustment to a future price to establish the final price of the forward contracted lambs in dollars per one hundred pounds.

(xiii) Forward contract purchases delivery month (28). Enter the delivery month of the lambs purchased through forward contracts as a 3-letter abbreviation.

(3) LS–124—Live Lamb Weekly Report (formula purchases).

(i) Lot identification (11). Enter code used to identify the lot to the packer.

(ii) Source (12). Enter ''1'', domestic, if lambs are purchased within the 50 States or ''2'', imported, if lambs are purchased outside of the 50 States.

(iii) Head count (13). Enter the quantity of lambs in the lot in number of head.

(iv) Total pounds (14). Enter the total quantity of lambs in the lot in pounds.

(v) Weighted average carcass price (15). Enter the average weighted average carcass price for the lambs in the lot in dollars per hundredweight.

(vi) Range of prices paid (16a–b). Enter the lowest (16a) and the highest (16b) prices paid for the lambs in the lot in dollars per hundredweight.

(vii) Range of premiums and discounts paid (17a–b). Enter the lowest (17a) and the highest (17b) premium and discount paid for the lot of lambs in dollars per hundredweight. Enter negative values in parenthesis.

(viii) Weighted average of premiums and discounts paid (18). Enter the weighted average of the premiums and discounts paid for the lot of lambs in dollars per hundredweight. Enter negative values in parenthesis.

(4) LS–125—Lamb Premiums and Discounts Weekly Report.

Enter the premiums and discounts (in dollars per hundredweight) expected to be in effect for the current slaughter week for each applicable category of premium and discount (11–32). For ''other'' categories (33–37), provide a brief description of the basis for the premium/ discount along with the value of the premium/discount. Enter negative values in parenthesis.

(5) LS–128—Boxed Lamb Daily Report. For lots comprising multiple items, provide information for each item in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Destination/Source (12). Enter ''1'', domestic, for product originating within the 50 States or ''2'', imported, for product originating from outside of the 50 States.

(iii) Sale type code (13). Enter the code corresponding to the sale type of the lot of boxed lamb.

(iv) Delivery period code (14). Enter the code corresponding to the delivery time period of the lot of boxed lamb.

(v) Refrigeration (15). Enter ''1'' if the product is sold in a fresh condition or ''2'' if the product is sold in a frozen condition.

(vi) Classification code (16). Enter the code corresponding to the grade of the boxed lamb, if applicable.

(vii) Lamb cut (17a–b). Enter the numerical code corresponding to the Institutional Meat Purchase Specifications (IMPS) (3 to 4 characters) (17a) or the internal corporate descriptor used to identify the product (17b). Descriptors must be entered consistently for all submissions.

(viii) Weight (18). Enter the code corresponding to the relative weight of the product. Where weight is a factor, enter ''1'' to signify the lighter weight range, ''2'' to signify the middle weight range, or ''3'' to signify the heavier weight range. Where weight is not a factor, enter ''4'' to signify all weights or mixed.

(ix) Total product weight (19). Enter the total weight of the boxed lamb cut in the lot in pounds.

(x) Price (20). Enter the price received for each boxed lamb cut in the lot in dollars per one hundred pounds, FOB Plant basis.

(xi) USDA Certified schedule code (21). Enter the code for the USDA Certified Program schedule, if applicable (e.g., CL, etc.); otherwise leave blank.

(xii) Branded product code (22a–b). Enter the quality grade code (22a) and the yield grade code (22b) that best describes the brand. Leave blank if not applicable.

(6) LS–129—Lamb Carcass Report. For lots comprised of distinct carcass weight range categories with different prices, provide information for each weight range in a separate record identified with the same lot identification or purchase order number.

(i) Lot identification or purchase order number (11). Enter code used to identify the lot to the packer.

(ii) Transaction type code (12). Enter the code corresponding to the transaction type of the lot of carcass lamb.

(iii) FOB Plant Price (13). Enter the price received for the lamb carcasses in dollars per one hundred pounds, FOB Plant basis.

(iv) Number of carcasses (14). Enter the total number of lamb carcasses in the lot.

(v) Classification code (15). Enter the corresponding USDA quality grade code.

(vi) Yield grade code (16). Enter the corresponding USDA yield grade code.

(vii) Estimated carcass weight range (17a–b). Enter the lowest (17a) and highest (17b) weights (in pounds) that best describes the majority of the lamb carcasses in the lot.

(viii) Delivery period code (18). Enter the code corresponding to the time period the lamb carcasses will deliver.

(ix) Transaction basis (19). Enter ''1'' for purchased carcasses or ''2'' for sold carcasses.

Appendix E—Mandatory Reporting Forms

The cattle, swine, and lamb mandatory reporting forms follow the docket.

BILLING CODE 3410–02–P

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE DAILY REPORT
(Current Established Prices)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	
11. LOT IDENTIFICATION	
12. SOURCE (1 = Domestic; 2 = Imported)	
13. PURCHASE TYPE CODE	
14. CLASS CODE	
15a. SELLING BASIS (1 = Live; 2 = Dressed)	
15b. SELLING BASIS - Shipment (1 = FOB; 2 = Delivered)	
16. HEAD COUNT	
17. ESTIMATED AVERAGE WEIGHT (pounds)	
18. AVERAGE PRICE ($/cwt)	
19. % CHOICE OR BETTER	
20. CLASSIFICATION CODE	
21. DRESSING PERCENTAGE	
22. ORIGIN (2-Letter State postal abbr.)	

PURCHASE TYPE CODE	CLASS CODE	CLASSIFICATION CODE
1 = NEGOTIATED CASH 2 = FORMULA NET 3 = FORWARD CONTRACT NET 4 = NEGOTIATED GRID NET 5 = FORMULA BASE 6 = FORWARD CONTRACT BASE 7 = NEGOTIATED GRID BASE	1 = MIXED STEER/HEIFER 2 = STEER 3 = HEIFER 4 = DAIRYBRED STR/HFR 5 = MIXED STR/HFR/COW	1 = PRIME 2 = CHOICE 3 = SELECT 4 = STANDARD 5 = PREMIUM WHITE 6 = CUTTER/CANNER 90% 7 = BONER 85% 8 = BREAKER 75% 9 = BULL 92%

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

23a. PREMIUM PAID - WEIGHT ($/cwt.)	
23b. PREMIUM PAID - QUALITY ($/cwt.)	
23c. PREMIUM PAID - YIELD ($/cwt.)	
23d. PREMIUM PAID - OTHER ($/cwt.)	
23e. DISCOUNT PAID - WEIGHT ($/cwt.)	
23f. DISCOUNT PAID - QUALITY ($/cwt.)	
23g. DISCOUNT PAID - YIELD ($/cwt.)	
23h. DISCOUNT PAID - OTHER ($/cwt.)	
24a. PACKER FINANCING (1 = yes; 2 = no)	
24b. DELIVERY LOCATION (1 = producer; 2 = packer)	
24c. DELIVERY DATE (1 = producer, 2 = packer)	
24d. DELIVERED (1 = 1-14, 2 = 15-30)	

LS-113 (05-07) *Destroy previous edition dated 04-07.*

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE DAILY REPORT
(Committed and Delivered Cattle)

1. IDENTIFICATION NUMBER	
2. COMPANY NAMEF	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	

PURCHASE TYPE CODE	CLASS CODE
1 = NEGOTIATED 2 = FORMULA NET 3 = FORWARD CONTRACT NET 4 = NEGOTIATED GRID NET 5 = FORMULA BASE 6 = FORWARD CONTRACT BASE 7 = NEGOTIATED GRID BASE	1 = MIXED STEER/HEIFER 2 = STEER 3 = HEIFER 4 = DAIRYBRED STEER/HEIFER 5 = MIXED STR/HFR/COW

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D. C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

11. LOT IDENTIFICATION		17. HEAD COUNT	
12. PURCHASING BASIS (1 = Delivered; 2 = Committed)		18. ORIGIN (2-Letter State postal abbr.)	
13. SOURCE (1 = Domestic; 2 = Imported)		19a. PACKER FINANCING (1 = yes; 2 = no)	
14. PURCHASE TYPE CODE		19b. DELIVERY LOCATION (1 = producer; 2 = packer)	
15. CLASS CODE		19c. DELIVERY DATE (1 = producer; 2 = packer)	
16. SELLING BASIS (1 = Live; 2 = Dressed)		19d. DELIVERED (1 = Less than 7; 2 = greater than 7 less than 14)	

LS-114 (04-07) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE WEEKLY REPORT
(Forward Contract and Packer-Owned)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	*(NOT APPLICABLE)*
SLAUGHTERED PACKER-OWNED CATTLE	
11. LOT IDENTIFICATION	
12. SOURCE (1 = Domestic; 2 = Imported)	
13. HEAD COUNT	
14. ACTUAL AVERAGE CARCASS WEIGHT	
15. AVERAGE DRESSING PERCENTAGE	
16. % YIELD GRADE 3 OR BETTER	
17. % QUALITY GRADE CHOICE OR BETTER	

PRIOR WEEK SLAUGHTERED CATTLE HEAD COUNTS
(Data in this block to be entered once per weekly submission.)

18. DOMESTIC, FORMULA ARRANGEMENT	Head Count	
19. IMPORTED, FORMULA ARRANGEMENT	Head Count	
20. DOMESTIC, NEGOTIATED	Head Count	
21. IMPORTED, NEGOTIATED	Head Count	
22. DOMESTIC, NEGOTIATED GRID	Head Count	
23. IMPORTED, NEGOTIATED GRID	Head Count	
24. DOMESTIC, FORWARD CONTRACT	Head Count	
25. IMPORTED, FORWARD CONTRACT	Head Count	

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D. C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

FORWARD CONTRACT PURCHASED CATTLE

26. LOT IDENTIFICATION	
27. HEAD COUNT	
28. BASIS LEVEL ($/cwt.)	
29. DELIVERY MONTH (abbreviated)	
30. DELIVERY YEAR (yyyy)	
31. BASIS LEVEL MONTH (abbreviatied)	

LS-115 (04-07) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

CATTLE PREMIUMS AND DISCOUNTS WEEKLY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	*(NOT APPLICABLE)*
11. PREMIUM/DISCOUNT - Prime	
12. PREMIUM/DISCOUNT - Choice	
13. PREMIUM/DISCOUNT - Select	
14. PREMIUM/DISCOUNT - Standard	
15. PREMIUM/DISCOUNT - Certified Angus Beef	
16. PREMIUM/DISCOUNT - Dairy-Type	
17. PREMIUM/DISCOUNT - Bullock/Stag	
18. PREMIUM DISCOUNT - Hardbone	
19. PREMIUM/DISCOUNT - Dark Cutter	
20. PREMIUM/DISCOUNT - YG 1.0-2.0 (<=.1" Fat)	
21. PREMIUM/DISCOUNT - YG 2.0-2.5 (<=.2" Fat)	
22. PREMIUM/DISCOUNT - YG 2.5-3.0 (<=.4" Fat)	
23. PREMIUM/DISCOUNT - YG 3.0-3.5 (<=.6" Fat)	
24. PREMIUM/DISCOUNT - YG 3.5-4.0 (<=.8" Fat)	
25. PREMIUM/DISCOUNT - YG 4.0-5.0 (<=1.2" Fat)	
26. PREMIUM/DISCOUNT - YG 5.0/up (>=1.2" Fat)	

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.
The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

27. PREMIUM/DISCOUNT - 400-500 lbs. Carcass	
28. PREMIUM/DISCOUNT - 500-550 lbs. Carcass	
29. PREMIUM/DISCOUNT - 550-600 lbs. Carcass	
30. PREMIUM/DISCOUNT - 600-900 lbs. Carcass	
31. PREMIUM/DISCOUNT - 900-950 lbs. Carcass	
32. PREMIUM/DISCOUNT - 950-1000 lbs. Carcass	
33. PREMIUM/DISCOUNT - over 1000 lbs. Carcass	
34. PREMIUM/DISCOUNT - Over 30 months	
35a. PREMIUM/DISCOUNT - Other Description	
35b. PREMIUM/DISCOUNT - Other Value	
36a. PREMIUM/DISCOUNT - Other Description	
36b. PREMIUM/DISCOUNT - Other Value	
37a. PREMIUM/DISCOUNT - Other Description	
37b. PREMIUM/DISCOUNT - Other Value	
38a. PREMIUM/DISCOUNT - Other Description	
38b. PREMIUM/DISCOUNT - Other Value	
39a. PREMIUM/DISCOUNT - Other Description	
39b. PREMIUM/DISCOUNT - Other Value	

LS-117 (04-07) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

COW/BULL PLANT DELIVERED BIDS
(*Dressed Basis*)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. PREMIUM WHITE (All Weights)	
11. BREAKER 75% (500 and up)	
12. BREAKER 75% (400-500 lbs)	
13. BREAKER 75% (350-400 lbs)	
14. BREAKER 75% (Under 350 lbs)	
15. BONER 85% (500 and up)	
16. BONER 85% (400-500 lbs)	
17. BONER 85% (350-400 lbs)	
18. BONER 85% (Under 350 lbs)	
19. CUTTER (Lean) 90% (500 lbs and up)	
20. CUTTER (Lean) 90% (400-500 lbs)	
21. CUTTER (Lean) 90% (350-400 lbs)	
22. CUTTER (Lean) 90% (Under 350 lbs)	
23. BULL (Over 600 lbs)	

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

24. BULL (Under 600 lbs)	

LS-131 (05-07)

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE COW/BULL DAILY PURCHASE REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. LOT IDENTIFICATION	
11. SOURCE (1=Domestic, 2=Imported)	
12. PURCHASE TYPE CODE	
13. CLASS CODE	
14. SELLING BASIS (1 = Live; 2 = Dressed)	
15. SHIPMENT BASIS (1 = FOB, 2 = Delivered)	
16. HEAD COUNT	
17. ESTIMATED AVERAGE WEIGHT	
18. AVERAGE NET PRICE ($/cwt)	
19. CLASSIFICATION CODE	
20. ORIGIN (2 Letter State Postal Abbr.)	
21a. PREMIUM PAID - Weight ($/cwt.)	
21b. PREMIUM PAID - Quality ($/cwt.)	
21c. PREMIUM PAID - Yield ($/cwt.)	

PURCHASE TYPE CODE	CLASS CODES	CLASSIFICATION CODE
1 = NEGOTIATED 2 = FORMULA NET 3 = FORWARD CONTRACT NET 4 = NEGOTIATED GRID NET 5 = FORMULA BASE 6 = FORWARD CONTRACT BASE 7 = NEGOTIATED GRID BASE	6 = DAIRY COW 7 = BEEF COW 8 = MIXED COW 9 = BULL	5 = PREMIUM WHITE 6 = CUTTER/CANNER 90% 7 = BONER 85% 8 = BREAKER 75% 9 = BULL 92%

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

21d. DISCOUNT PAID - Weight ($/cwt.)	
21e. DISCOUNT PAID - Quality ($/cwt.)	
21f. DISCOUNT PAID - Yield ($/cwt.)	

LS-132 (04-07)

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

BOXED BEEF DAILY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	
11. LOT IDENTIFICATION OR PURCHASE ORDER NUMBER	
12. DESTINATION (1 = Domestic; 2 = Export Overseas, 3 = Export NAFTA)	
13. SALES TYPE CODE	
14. DELIVERY PERIOD CODE	
15. REFRIGERATION (1 = Fresh 1-14; 2 = Frozen; 3 = Fresh 14+)	
16. CLASS CODE	
17. CLASSIFICATION CODE	
18a. BEEF CUT - IMPS Code	

DELIVERY PERIOD	CLASS CODE	CLASSIFICATION CODE	TRIM SPEC CODE
1 = 0-21 DAYS 2 = 22-60 DAYS 3 = 61-90 DAYS 4 = 91/UP DAYS	1 = MIXED STEER/HEIFER 2 = STEER 3 = HEIFER 4 = DAIRYBRED STR/HFR 5 = MIXED STR/HFR/COW 6 = DAIRY COW 7 = BEEF COW 8 = MIXED COW 9 = BULL	1 = PRIME 2 = CHOICE 3 = SELECT 4 = PREMIUM WHITE 5 = CUTTER/CANNER 90% 6 = BONER 85% 7 = BREAKER 75% 8 = BULL 92% 9 = UNGRADED	1 = 3/4" AVG; 1" MAX 2 = 1/4" AVG; 1/2" MAX 3 = 1/8" AVG; 1/4" MAX 4 = PRACTICALLY FREE; 1/8" MAX 5 = PEELED/DENUDED; 1/8" MAX 6 = PEELED/DENUDED SURFACE MEMBRANE REMOVED; 1/8" MAX 7 = GROUND BEEF 8 = TRIMMINGS 9 = BONELESS PROCESSING BEEF

SALES TYPE CODE	BRANDED PRODUCT CODE	
	QUALITY	YIELD
1 = NEGOTIATED 2 = FORMULA MARKETING ARRANGEMENT 3 = FORWARD CONTRACT	1 = PRIME 2 = UPPER 2/3 CHOICE 3 = LOWER 1/3 CHOICE 4 = SELECT	1 = YIELD GRADE 1-3 2 = YIELD GRADE 4

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 8 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D. C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

18b. BEEF CUT - Description (if IMPS not applicable)	
19. TRIM SPECIFICATION CODE	
20. WEIGHT (1=Light; 2=Medium; 3= Heavy; 4=Mixed)	
21. TOTAL PRODUCT WEIGHT (pounds)	
22. FOB PLANT PRICE ($/cwt.)	
23. USDA CERTIFIED SCHEDULE CODE (if applicable)	
24a. BRANDED PRODUCT CODE - Quality	
24b. BRANDED PRODUCT CODE - Yield	

LS-126 (05-08) *Destroy previous edition dated 12-07.*

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

SWINE PRIOR DAY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

CLASS CODE	PURCHASE TYPE CODE	OWNERSHIP CODE
1 = BARROWS/GILTS 2 = SOW 3 = BOARS/STAGS	1 = NEGOTIATED 2 = OTHER MARKET FORMULA 3 = SWINE OR PORK MARKET FORMULA 4 = OTHER PURCHASE ARRANGEMENT 5 = PACKER-SOLD NEGOTIATED 6 = PACKER-SOLD OTHER MARKET FORMULA 7 = PACKER-SOLD SWINE OR PORK MARKET FORMULA 8 = PACKER-SOLD OTHER PURCHASE ARRANGEMENT 9 = PACKER-OWNED	1 = PACKER-OWNED 2 = PACKER-SOLD 3 = ALL OTHER

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

11. SLAUGHTERED SWINE - Lot Identification	
12. SLAUGHTERED SWINE - Class Code	
13. SLAUGHTERED SWINE - Purchase Type Code	
14. SLAUGHTERED SWINE - Head Count	
15. SLAUGHTERED SWINE - Base Price ($/cwt.)	
16. SLAUGHTERED SWINE - Average Net Price ($/cwt.)	
17. SLAUGHTERED SWINE - Average Live Weight (pounds)	
18. SLAUGHTERED SWINE - Avg. Carcass Weight (pounds)	
19. SLAUGHTERED SWINE - Average Sort Loss ($/cwt.)	
20. SLAUGHTERED SWINE - Average Backfat (inches)	
21. SLAUGHTERED SWINE - Average Loin Depth (inches)	
22. SLAUGHTERED SWINE - Average Lean Percentage	
23. PURCHASED SWINE - Lot Identification	
24. PURCHASED SWINE - Ownership Code	

25. PURCHASED SWINE - Class Code	
26. PURCHASED SWINE - Purchase Type Code	
27. PURCHASED SWINE - Head Count	
28. PURCHASED SWINE - Avg. Live Weight (pounds)	
29. PURCHASED SWINE - Base Price ($/cwt.)	
30. PURCHASED SWINE - Origin (2 - letter State postal abbr.)	

LS-118 (04-07) *Destroy previous edition dated 08-00.*

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

SWINE PRIOR DAY REPORT

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

31. SCHEDULED SWINE - Head Count for Day 1		38. SCHEDULED SWINE - Head Count for Day 8	
32. SCHEDULED SWINE - Head Count for Day 2		39. SCHEDULED SWINE - Head Count for Day 9	
33. SCHEDULED SWINE - Head Count for Day 3		40. SCHEDULED SWINE - Head Count for Day 10	
34. SCHEDULED SWINE - Head Count for Day 4		41. SCHEDULED SWINE - Head Count for Day 11	
35. SCHEDULED SWINE - Head Count for Day 5		42. SCHEDULED SWINE - Head Count for Day 12	
36. SCHEDULED SWINE - Head Count for Day 6		43. SCHEDULED SWINE - Head Count for Day 13	
37. SCHEDULED SWINE - Head Count for Day 7		44. SCHEDULED SWINE - Head Count for Day 14	

LS-118 Reverse (04-07) *Destroy previous edition dated 08-00.*

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
MARKETING SERVICE

SWINE DAILY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	

CLASS CODE	PURCHASE TYPE CODE
1 = BARROWS/GILTS 2 = SOW 3 = BOARS/STAGS	1 = NEGOTIATED 2 = OTHER MARKET FORMULA 3 = SWINE OR PORK MARKET FORMULA 4 = OTHER PURCHASE ARRANGEMENT 5 = PACKER-SOLD NEGOTIATED 6 = PACKER-SOLD OTHER MARKET FORMULA 7 = PACKER-SOLD SWINE OR PORK MARKET FORMULA 8 = PACKER-SOLD OTHER PURCHASE ARRANGEMENT

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

11. PURCHASED SWINE - Lot Identification		15. PURCHASED SWINE - Head Count	
12. PURCHASED SWINE - Purchase Type Code		16. PURCHASED SWINE - Base Price ($/cwt.)	
13. PURCHASED SWINE - Average Live Weight		17. PURCHASED SWINE - Origin (2-letter State postal abbr.)	
14. PURCHASED SWINE - Class Code			

PACKER-SOLD SWINE PURCHASES		ALL OTHER SWINE PURCHASES	
18. EST. NEGOTIATED PURCHASES Head Count		26. EST. NEGOTIATED PURCHASES Head Count	
19. EST. OTHER MARKET FORMULA PURCHASES Head Count		27. EST. OTHER MARKET FORMULA PURCHASES Head Count	
20. EST. SWINE/PORK MARKET FORMULA PURCHASES Head Count		28. EST. SWINE/PORK MARKET FORMULA PURCHASES Head Count	
21. EST. OTHER ARRANGEMENT PURCHASES Head Count		29. EST. OTHER ARRANGEMENT PURCHASES Head Count	
22. ACT. NEGOTIATED PURCHASES Head Count		30. ACT. NEGOTIATED PURCHASES Head Count	
23. ACT. OTHER MARKET FORMULA PURCHASES Head Count		31. ACT. OTHER MARKET FORMULA PURCHASES Head Count	
24. ACT. SWINE/PORK MARKET FORMULA PURCHASES Head Count		32. ACT. SWINE/PORK MARKET FORMULA PURCHASES Head Count	
25. ACT OTHER ARRANGEMENT PURCHASES Head Count		33. ACT OTHER ARRANGEMENT PURCHASES Head Count	

LS-119 (01-07) *Destroy previous edition dated 08-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

WEEKLY NONCARCASS MERIT PREMIUM SWINE REPORTING

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

11a. NONCARCASS MERIT - Volume - Low Range		17a. NONCARCASS MERIT - Other Description	
11b. NONCARCASS MERIT - Volume - High Range		17b. NONCARCASS MERIT - Other Value - Low Range	
12a. NONCARCASS MERIT - Transportation - Low Range		17c. NONCARCASS MERIT - Other Value - High Range	
12b. NONCARCASS MERIT - Transportation - High Range		18a. NONCARCASS MERIT - Other Description	
13a. NONCARCASS MERIT - Delivery Timing - Low Range		18b. NONCARCASS MERIT - Other Value - Low Range	
13b. NONCARCASS MERIT - Delivery Timing - High Range		18c. NONCARCASS MERIT - Other Value - High Range	
14a. NONCARCASS MERIT - Breed - Low Range		19a. NONCARCASS MERIT - Other Description	
14b. NONCARCASS MERIT - Breed - High Range		19b. NONCARCASS MERIT - Other Value - Low Range	
15a. NONCARCASS MERIT - Pork Quality Assurance Low Range		19c. NONCARCASS MERIT - Other Value - High Range	
15b. NONCARCASS MERIT - Pork Quality Assurance High Range		20a. NONCARCASS MERIT - Other Description	
16a. NONCARCASS MERIT - Other Description		20b. NONCARCASS MERIT - Other Value - Low Range	
16b. NONCARCASS MERIT - Other Value - Low Range		20c. NONCARCASS MERIT - Other Value - High Range	
16c. NONCARCASS MERIT - Other Value - High Range			

LS-120 (04-07) *Destroy previous edition dated 07-00.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

LIVE LAMB DAILY REPORT

(Current Established Prices)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

PURCHASE TYPE CODE	CLASS CODE	CLASSIFICATION CODE	PELT CODE
1 = NEGOTIATED 2 = FORMULA MARKETING ARRANGEMENT 3 = FORWARD CONTRACT	1 = SLAUGHTER LAMBS 2 = EWES 3 = RAMS/STAGS	1 = PRIME 2 = CHOICE 3 = GOOD 4 = UTILITY 5 = CULL	1 = WOOLED 2 = #1 FALL SHORN 3 = #2 4 = #3-4

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

11. LOT IDENTIFICATION		22. DRESSING PERCENTAGE	
12. SOURCE (1 = Domestic; 2 = Imported)		23. ORIGIN (2-letter State postal abbr.)	
13. PURCHASE TYPE CODE		24. PELT CODE	
14. CLASS CODE		25a. PREMIUM PAID - WEIGHT ($/cwt.)	
15a. SELLING BASIS (1 = Live; 2 = Dressed)		25b. PREMIUM PAID - QUALITY ($/cwt.)	
15b. SELLING BASIS SHIPMENT (1 = FOB; 2 = Delivered)		25c. PREMIUM PAID - YIELD ($/cwt.)	
16. HEAD COUNT		25d. DISCOUNT PAID - WEIGHT ($/cwt.)	
17a. WEIGHT RANGE - LOW (pounds)		25e. DISCOUNT PAID - QUALITY ($/cwt.)	
17b. WEIGHT RANGE - HIGH (pounds)		25f. DISCOUNT PAID - YIELD ($/cwt.)	
18. ESTIMATED AVERAGE WEIGHT (pounds)			
19. AVERAGE PRICE ($/cwt.)			
20. % CHOICE OR BETTER			
21. CLASSIFICATION CODE			

LS-121 (05-07) *Destroy previous edition dated 04-07.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB WEEKLY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**
SLAUGHTERED PACKER-OWNED LAMBS	
11. LOT IDENTIFICATION	
12. SOURCE (1 = Domestic; 2 = Imported)	
13. HEAD COUNT	
14a. ACTUAL CARCASS WEIGHT RANGE - LOW	
14b. ACTUAL CARCASS WEIGHT RANGE - HIGH	
15. ACTUAL AVERAGE CARCASS WEIGHT	
16. AVERAGE DRESSING PERCENTAGE	
17. % YIELD GRADE 3 OR BETTER	
18. % QUALITY GRADE CHOICE OR BETTER	

PRIOR WEEK SLAUGHTERED LAMB HEAD COUNTS
(Data in this block to be entered once per weekly submission.)

19. DOMESTIC, FORWARD CONTRACT	Head Count	
20. IMPORTED, FORWARD CONTRACT	Head Count	
21. DOMESTIC, FORMULA ARRANGEMENT	Head Count	
22. IMPORTED, FORMULA ARRANGEMENT	Head Count	
23. DOMESTIC, NEGOTIATED	Head Count	
24. MPORTED, NEGOTIATED	Head Count	

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D. C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

FORWARD CONTRACT PURCHASED LAMBS

25. LOT IDENTIFICATION	
26. HEAD COUNT	
27. BASIS LEVEL ($/cwt.)	
28. DELIVERY MONTH (3-letter abbreviation)	

LS-123 (05-07) *Destroy previous edition dated 04-07.*

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB WEEKLY REPORT
(Formula Purchases)

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

11. LOT IDENTIFICATION		17a. PREMIUM/DISCOUNT RANGE - LOW ($/cwt.)	
12. SOURCE (1 = Domestic; 2 = Imported)		17b. PREMIUM/DISCOUNT RANGE - HIGH ($/cwt.)	
13. HEAD COUNT		18. PREMIUM/DISCOUNT WEIGHTED AVERAGE ($/cwt.)	
14. TOTAL POUNDS			
15. WEIGHTED AVERAGE CARCASS PRICE ($/cwt.)			
16a. PRICE RANGE - LOW ($/cwt.)			
16b. PRICE RANGE - HIGH ($/cwt.)			

LS-124 (05-07) *Destroy previous edition dated 04-07.*

FORM APPROVED. - OMB NO. 0581-0186

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LAMB PREMIUMS AND DISCOUNTS WEEKLY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME (1 = 10:00 a.m.; 2 = 2:00 p.m.)	**(NOT APPLICABLE)**

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

11. PREMIUM/DISCOUNT - Prime		27. PREMIUM/DISCOUNT - 75-85 lbs. Carcass	
12. PREMIUM/DISCOUNT - Choice		28. PREMIUM/DISCOUNT - Over 85 lbs. Carcass	
13. PREMIUM/DISCOUNT - Good		29. PREMIUM/DISCOUNT - Wooled Pelt	
14. PREMIUM/DISCOUNT - Standard		30. PREMIUM/DISCOUNT - #1 Fall Shorn Pelt	
15. PREMIUM/DISCOUNT - Choice YG 2 or Better		31. PREMIUM/DISCOUNT - #2 Fall Shorn Pelt	
16. PREMIUM/DISCOUNT - Bucky		32. PREMIUM/DISCOUNT - #3-4 Fall Shorn Pelt	
17. PREMIUM/DISCOUNT - Yearling or Older		33a. PREMIUM/DISCOUNT - Other Description	
18. PREMIUM DISCOUNT - YG 1.0-2.0 (<=.16" Fat)		33b. PREMIUM/DISCOUNT - Other Value	
19. PREMIUM/DISCOUNT - YG 2.0-3.0 (<=.26" Fat)		34a. PREMIUM/DISCOUNT - Other Description	
20. PREMIUM/DISCOUNT - YG 3.0-4.0 (<=.36" Fat)		34b. PREMIUM/DISCOUNT - Other Value	
21. PREMIUM/DISCOUNT - YG 4.0-5.0 (<=.46" Fat)		35a. PREMIUM/DISCOUNT - Other Description	
22. PREMIUM/DISCOUNT - YG 5.0/up (>=.46" Fat)		35b. PREMIUM/DISCOUNT - Other Value	
23. PREMIUM/DISCOUNT - Under 45 lbs. Carcass		36a. PREMIUM/DISCOUNT - Other Description	
24. PREMIUM/DISCOUNT - 45-55 lbs. Carcass		36b. PREMIUM/DISCOUNT - Other Value	
25. PREMIUM/DISCOUNT - 55-65 lbs Carcass		37a. PREMIUM/DISCOUNT - Other Description	
26. PREMIUM/DISCOUNT - 65-75 lbs. Carcass		37b. PREMIUM/DISCOUNT - Other Value	

LS-125 (05-07) *Destroy previous edition dated 04-07.*

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

BOXED LAMB DAILY REPORT

1. IDENTIFICATION NUMBER	
2. COMPANY NAME	
3. PLANT STREET ADDRESS	
4. PLANT CITY	
5. PLANT STATE	
6. PLANT ZIP CODE	
7. CONTACT NAME	
8. PHONE NUMBER (include area code)	
9. REPORTING DATE (mm/dd/yyyy)	
10. REPORTING TIME	**(NOT APPLICABLE)**
11. LOT IDENTIFICATION OR PURCHASE ORDER NUMBER	
12. SOURCE (1 = Domestic; 2 = Imported)	
13. SALE TYPE CODE	
14. DELIVERY PERIOD CODE	
15. REFRIGERATION (1 = Fresh; 2 = Frozen)	
16. CLASSIFICATION CODE	
17a. LAMB CUT - IMPS Code	
17b. LAMB CUT - Description (if IMPS not applicable)	

SALE TYPE CODE	DELIVERY PERIOD CODE	CLASSIFICATION CODE
1 = NEGOTIATED 2 = FORMULA MARKETING ARRANGEMENT 3 = FORWARD CONTRACT	1 = 0-21 DAYS 2 = 22-60 DAYS 3 = 61-90 DAYS 4 = 91/UP DAYS	1 = PRIME 2 = CHOICE 3 = PRIME/CHOICE 4 = GOOD 5 = UNGRADED

BRANDED PRODUCT CODE	
QUALITY	YIELD
1 = PRIME 2 = CHOICE	1 = YIELD GRADE 2 or BETTER 2 = YIELD GRADE 1-3 3 = YIELD GRADE 4

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D. C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

18. WEIGHT (1=Light; 2=Medium; 3= Heavy; 4=Mixed)	
19. TOTAL PRODUCT WEIGHT (pounds)	
20. FOB PLANT PRICE ($/cwt.)	
21. USDA CERTIFIED SCHEDULE CODE (if applicable)	
22a. BRANDED PRODUCT CODE - Quality	
22b. BRANDED PRODUCT CODE - Yield	

LS-128 (04-07) *Destroy previous edition dated 11-00.*

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LAMB CARCASS REPORT

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance programa (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights,1400 Independence Avenue, S.W.,Washington,D.C.20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

		TRANSACTION TYPE CODE	DELIVERY PERIOD CODE	CLASSIFICATION CODE	YIELD GRADE CODE
1. IDENTIFICATION NUMBER		1 = NEGOTIATED 2 = FORMULA MARKETING ARRANGEMENT 3 = FORWARD CONTRACT	1 = 0-14 DAYS 2 = 15 + Days	1 = PRIME 2 = CHOICE 3 = PRIME/CHOICE 4 = GOOD 5 = UNGRADED	1 = YG 1 2 = YG 2 3 = YG 3 4 = YG 4 5 = YG 5 6 = YG 1-2 7 = YG 2-3 8 = YG 3-4 9 = YG 4-5
2. COMPANY NAME					
3. PLANT STREET ADDRESS					
4. PLANT CITY					
5. PLANT STATE					
6. PLANT ZIP CODE					
7. CONTACT NAME					
8. PHONE NUMBER (include area code)					
9. REPORTING DATE (mm/dd/yyyy)					
10. REPORTING TIME	**(NOT APPLICABLE)**				

11. LOT IDENTIFICATION OR PURCHASE ORDER NUMBER		16. YIELD GRADE CODE	
12. TRANSACTION TYPE CODE		17a. EST. CARCASS WEIGHT RANGE - Low	
13. FOB PLANT PRICE ($/cwt.)		17b. EST. CARCASS WEIGHT RANGE - High	
14. NUMBER OF CARCASSES		18. DELIVERY PERIOD CODE	
15. CLASSIFICATION CODE		19. TRANSACTION BASIS (1 = Purchase; 2 = Sale)	

LS-129 (04-07) Destroy previous edition date 07-00.

[FR Doc. E8–10185 Filed 5–15–08; 8:45 am]

BILLING CODE 3410–02–C

Federal Register

Friday,
May 16, 2008

Part IV

Department of Housing and Urban Development

Notice of Funding Opportunity (NOFA) for HOME Investment Partnership Program (HOME)—Competitive Reallocation of CHDO Funds To Provide for Energy Efficient and Environmentally-Friendly Housing for Low-Income Families; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5195–N–01]

Notice of Funding Opportunity (NOFA) for HOME Investment Partnership Program (HOME)—Competitive Reallocation of CHDO Funds to Provide for Energy Efficient and Environmentally-Friendly Housing for Low-Income Families

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This notice of funding availability establishes the funding criteria for the Competitive Reallocation of Community Housing Development Organizations (CHDO) Funds to Provide for Energy Efficient and Environmentally-Friendly Housing for Low-Income Families. The purpose of this NOFA is to competitively reallocate deobligated HOME CHDO set-aside funds in order to expand the supply of energy efficient and environmentally-friendly (Green) housing that is affordable to low-income families, using design and technology models that can be replicated.

Overview Information

A. Federal Agency Name. Department of Housing and Urban Development, Community Planning and Development, Office of Affordable Housing Programs.

B. Funding Opportunity Title. Competitive Reallocation of CHDO Funds to Provide for Energy Efficient and Environmentally-Friendly Housing for Low-Income Families.

C. Announcement Type. Notice of Funding Availability (NOFA).

D. Funding Opportunity Number. FR–5195–N–01.

E. Catalogue of Federal Domestic Assistance (CFDA) Number. 14.239, HOME Investment Partnership Program (HOME)

F. Application Deadline Date. July 1, 2008.

G. Additional Overview Information

1. Summary. This NOFA announces the availability of approximately $1 million in deobligated HOME Community Housing Development Organization (CHDO) set-aside funds for competitive reallocation in order to expand the supply of energy efficient and environmentally-friendly (Green) housing that is affordable to low-income families, using design and technology models that can be replicated.

2. Purpose of this NOFA. The purpose of this NOFA is to competitively reallocate deobligated HOME CHDO set-aside funds in order to expand the supply of energy efficient and environmentally-friendly (Green) housing that is affordable to low-income families, using design and technology models that can be replicated.

3. Available Funds. Approximately $1 million in deobligated HOME CHDO set-aside funds are available for competitive reallocation under this NOFA.

4. Eligible Applicants. Eligible applicants are HOME Participating Jurisdictions (PJ) that are currently participating in the regular HOME program and have received an annual HOME formula allocation each year since FY 2004. Housing projects funded under this NOFA must be carried out by a non-profit organization in the applicant's jurisdiction that the PJ has determined currently meets the definition of a Community Housing Development Organization (CHDO) pursuant to 24 CFR 92.2.

5. Match. 25 percent of the HOME funds awarded under this NOFA must be matched with non-federal funds.

Full Text Announcement

If you are interested in applying for funding under this competitive reallocation of HOME funds, please review the contents of this NOFA carefully.

I. Application Due Date, Standard Forms, Further Information, and Technical Assistance

A. Application Due Date. Applications for funding under this NOFA are due on or before July 1, 2008. Applications submitted after the established deadline will not receive funding consideration.

B. Application Submission Procedures and New Security Procedures. HUD has implemented new security procedures that apply to application submissions. Please read the following instructions carefully and completely. HUD will not accept hand-delivered applications. Applications may be mailed using the United States Postal Service (USPS) or may be shipped via the following delivery services: United Parcel Service (UPS), FedEx, or DHL. No other delivery services are permitted into HUD Headquarters without an escort. You are, therefore, urged to use one of the four carriers listed above.

C. Mailed Applications. HUD will consider your application to be filed by the application due date if your application is postmarked on or before 12 midnight on the application due date and received in HUD Headquarters on or within fifteen (15) days of the application due date. Applicants must obtain and save a mailing receipt that shows the date when the application was received by the United States Postal Service (USPS). This receipt from USPS showing the date and time of the mailing will be your documentary evidence that your application was filed by the application deadline.

D. Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, HUD will consider your application to be filed by the application due date if your application is received on or before the application due date, or if you submit documentary evidence that your application was placed in transit with the overnight delivery/express service no later than the application due date. Due to new security measures, you are urged to use one of the carrier services that do business with HUD Headquarters regularly. These services are United Parcel Service (UPS), FedEx, or DHL. Timely delivery of your application to HUD by a carrier other than those listed cannot be guaranteed. Delivery by these carriers must be made during HUD's Headquarters business hours, between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday. If these companies do not service your area, you should submit your application via the United States Postal Service.

E. Address for Submitting Applications. Submit one original and two copies of your application to the Department of Housing and Urban Development, Office of Affordable Housing Programs (OAHP), 451 Seventh Street, SW., Room 7162, Washington, DC 20410–7000, ATTN: HOME Program CHDO Competition.

F. Application Forms. There is no separate application kit for this NOFA. This NOFA contains all the information necessary for submission of your application. Section V describes the application selection process and requirements. Section VI provides a checklist for application submission. Copies of the required standard forms are located in Appendix 2. You may also request copies of these standard forms by calling the contact person in the Office of Affordable Housing Programs identified in paragraph G. When requesting a standard form, you should refer to the HOME Program CHDO Competition, and provide your name, address (including zip code) and telephone number (including area code).

G. HUD Information Contact. For further information about this NOFA, you may contact Ginger Macomber, Senior Affordable Housing Specialist,

Office of Affordable Housing Programs, Department of Housing and Urban Development, Room 7162, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 402–4605 (this is not a toll-free number). This number can be accessed via TTY by calling the toll-free Federal Information Relay Service Operator at 1–800–877–8339.

H. Paperwork Reduction Act Statement. The information collection requirements in this NOFA have been submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and are waiting the assignment of an OMB control number 2506–0175. Under the Paperwork Reduction Act, a federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

II. Amount Allocated

The amount of HOME funds available for reallocation under this NOFA is approximately $1 million. Section 217(c) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12704 *et seq.*) requires that HOME funds that become available as a result of the deobligation by HUD of CHDO set-aside funds previously allocated to HOME Participating Jurisdictions must be reallocated by competition. Approximately $1 million has been recaptured and remains available since the last CHDO competition in 2004. Any additional recaptured HOME CHDO set-aside funds that become available within 24 months of the announcement of awards under this NOFA may be used to fund applications submitted in response to this NOFA.

III. Program Description, Eligible Applicants and Eligible Projects

A. Program Description. The purpose of the HOME program is to expand the supply of standard, affordable housing for low- and very low-income families by providing annual formula grants to states, units of general local government and consortia of units of general local governments that are HOME Participating Jurisdictions (PJs). Each PJ must spend at least 15 percent of its HOME grants on housing that is owned, developed or sponsored by nonprofit CHDOs. PJs use their HOME grants to fund housing programs that meet local needs and priorities. PJs have a great deal of flexibility in designing their local HOME programs within the guidelines established by the HOME program statute and regulations. This NOFA provides an incentive to PJs to work with qualified CHDOs to develop HOME-assisted energy efficient and environmentally-friendly (Green) housing that is affordable to low-income families, using design and technology models that can be replicated. In support of the President's National Energy Policy, HUD formed an Energy Task Force and issued an Energy Action Plan that identifies a number of actions HUD will take to encourage energy efficiency and conservation. HUD also made the reduction of energy costs in the building and operation of HUD-assisted housing an indicator in HUD's Annual Performance Plan. HUD has signed a memorandum of understanding with the Environmental Protection Agency and the Department of Energy to promote Energy Star compliant housing. HUD collects information on HOME-assisted units that have received Energy Star certification through HUD's Integrated Disbursement and Information System (IDIS).

B. Eligible Applicants. For the purposes of this NOFA competition, eligible applicants are HOME Participating Jurisdictions (PJ) that are currently participating in the regular HOME program and have received an annual HOME formula allocation each year since FY 2004. The housing projects funded under this NOFA must be carried out by a non-profit organization in the applicant's jurisdiction that the PJ has determined currently meets the definition of a Community Housing Development Organization (CHDO) pursuant to 24 CFR 92.2.

C. Eligible Projects. The only eligible projects under this NOFA are HOME-eligible CHDO set-aside projects that are permitted under the regular HOME regulations, and that qualify for and will receive Energy Star Certification by an independent Home Energy Rater (HER) upon completion. An eligible CHDO set-aside project is one where a CHDO owns, develops or sponsors the housing produced. To earn the Energy Star Certification, the housing must meet guidelines for energy efficiency set by the U.S. Environmental Protection Agency (EPA). These housing units are at least 15% more energy efficient than units built to the 2004 International Residential Code (IRC) and include additional energy-saving features. Information about Energy Star can be found at *http://www.energystar.gov/.* Any housing unit three stories or less can earn the Energy Star label if it has been verified to meet EPA's guidelines, including: single family, attached, and low-rise multi-family homes; manufactured homes; systems-built homes (e.g., SIP, ICF, or modular construction); log homes, concrete homes; and existing retrofitted homes. In preparing your application, you may wish to consult with local firms that have experience developing such projects or with a local institution of higher learning with knowledge of energy efficient design and Green construction. Information about HUD's energy initiatives, and links to other useful information sources can be found at: *http://www.hud.gov/energy/.* HOME funds awarded under this NOFA are subject to all the regular HOME regulations found at 24 CFR part 92, including the 24-month commitment deadline, the five-year expenditure deadline and the requirements for reporting results in the Integrated Disbursement and Information System (IDIS). As permitted in the regular HOME Program, up to five percent of the total amount of your PJ's regular HOME formula allocation plus HOME funds awarded under this NOFA may be used to pay for CHDO operating costs necessary for carrying out projects funded under this NOFA (see 24 CFR 92.208). Up to ten percent of the total amount of your PJ's regular HOME formula allocation plus HOME funds awarded under this NOFA may be used to pay for the PJ's eligible HOME administration and planning costs (see 24 CFR 92.207). However, none of the HOME funds awarded under this competitive NOFA can be used to pay for CHDO operating costs or HOME administration and planning costs.

IV. Threshold and Program Requirements

A. Threshold Requirements

1. Ineligible Applicants. HUD will not consider an application from an ineligible applicant.

2. Compliance with Fair Housing and Civil Rights Laws. All applicants and their subrecipients must comply with all applicable fair housing and civil rights requirements in 24 CFR 92.350 and CFR 5.105(a). If you, the applicant: (a) Have been charged with an ongoing systemic violation of the Fair Housing Act; or (b) are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973; or Section 109 of the Housing and Community Development Act of 1974; and the charge, lawsuit, or letter of findings referenced in (a), (b), or (c) above has not been resolved to HUD's satisfaction before the application

deadline, then you are ineligible to apply for assistance under this NOFA and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken before the application deadline are sufficient to resolve the matter. Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to: (1) A voluntary compliance agreement signed by all parties in response to a letter of findings; (2) a HUD-approved conciliation agreement signed by all parties; (3) a consent order or consent decree; or (4) an issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

3. Encouraging Accessible Design Features. HUD is encouraging applicants to add accessible design features beyond those required under civil rights laws and regulations. Such features would eliminate many other barriers limiting the access of persons with disabilities to housing and other facilities. Copies of the Uniform Federal Accessibility Standards (UFAS) are available from the NOFA Information Center at (800) HUD–8929 and also from the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5230, Washington, DC 20410–2000; telephone (202) 755–5404 or toll-free at (800) 877–8339 (TTY). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. (This is a toll-free number.)

a. *Visitability in New Construction and Substantial Rehabilitation.* Applicants are encouraged to incorporate visitability standards, where feasible, in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. Visitability means that there is at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk, and that the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, allowing 32 inches of clear passage space. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. More information about visitability is available at *http://www.concretechange.org/*.

b. Universal Design. Applicants are encouraged to incorporate universal design in the construction or rehabilitation of housing, retail establishments, and community facilities funded with HUD assistance. Universal design is the design of products and environments to be usable by all people to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost to the user. Universal design benefits people of all ages and abilities. In addition to any applicable required accessibility feature under Section 504 of the Rehabilitation Act of 1973 or the design and construction requirements of the Fair Housing Act, the Department encourages applicants to incorporate the principles of universal design when developing housing, community facilities, and electronic communication mechanisms, or when communicating with community residents at public meetings or events. HUD believes that to address affordable housing needs effectively, it is necessary to provide affordable housing that is accessible to all regardless of ability or age. Likewise, creating places where people work, train, and interact that are usable and open to all residents increases opportunities for economic and personal self-sufficiency. More information on universal design is available from the Center for Universal Design at *http://www.design.ncsu.edu/cud/* or the Resource Center on Accessible Housing and Universal Design at *http://www.abledata.com/abledata.cfm?pageiSd=113573&top=16029&sectionid=19326*.

4. Conducting Business in Accordance with Core Values and Ethical Standards/Code of Conduct. Applicants subject to 24 CFR parts 84 or 85 (most nonprofit organizations and state, local, and tribal governments or government agencies or instrumentalities that receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, before entering into an agreement with HUD, you will be required to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. An applicant who previously submitted an application and included a copy of its code of conduct will not be required to submit another copy if the applicant is listed on HUD's Web site *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm* and if the information has not been revised. An applicant not listed on the above Web site must submit a copy of its code of conduct with their application for assistance. An applicant must also include a copy of its code of conduct if the information listed on the above Web site has changed (e.g., the person who submitted the previous application is no longer your authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed, etc.). You are prohibited from receiving an award of funds from HUD if you fail to meet this requirement for a code of conduct.

5. Delinquent Federal Debts. It is HUD policy that applicants with an outstanding federal tax debt will not be eligible to receive an award of funds from the Department unless: (1) A negotiated repayment schedule is established and the repayment schedule is not delinquent, or (2) other arrangements satisfactory to HUD are made prior to the award of funds by HUD. If arrangements satisfactory to HUD cannot be completed within 90 days of notification of selection, HUD will not make an award of funds to the applicant, but offer the award to the next eligible applicant. Applicants selected for funding, or awarded funds have an obligation to report to HUD changes in status of a current IRS agreement covering federal debt. HUD may withhold funding, terminate an award, or seek other remedies from a grantee where a previously agreed upon payment schedule has not been adhered to or a new agreement with the IRS has not been signed.

6. Executive Order 13202, ''Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects''. Compliance with HUD regulations at 24 CFR 5.108 that implement Executive Order 13202 is a condition of receipt of assistance under this NOFA. Subrecipients are considered recipients of financial assistance for purposes of 24 CFR 5.108.

7. Procurement of Recovered Materials. State agencies and agencies of a political subdivision of a state that are using assistance under this NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

B. Program Requirements

In addition to meeting the requirements of this NOFA, you are subject to all the regular HOME regulations found at 24 CFR part 92, including the 24-month commitment deadline, the five-year expenditure deadline and the requirements for reporting results in the Integrated Disbursement and Information System (IDIS). Where there is a conflict between the HOME regulations and this NOFA, the more stringent or limiting requirements shall prevail.

V. Application Selection Process

A. Rating. HUD will review all applications in accordance with the requirements of this NOFA and the three selection criteria and sub-factors referenced at 24 CFR 92.453 and found at section 217(c) of NAHA. As explained below in section V. E., two of the three selection criteria are related to the applicant PJ's past performance in the regular HOME Program. To facilitate the competition, HUD has already determined the point scores for all potential applicants for these two selection criteria, including sub-factors, based on information each PJ has reported to HUD through IDIS. A summary of these scores can be found in Appendix 1 of this NOFA. The point score received for the remaining Selection Criterion 3 will be added to the applicant's past performance scores for Selection Criterion 1 and Selection Criterion 2 in order to obtain the applicant's total rating points score.

B. Ranking and Selection Procedures. Applications that receive a total rating of 75 points or more will be eligible for selection under this NOFA. HUD will place these applications in rank order and make selections in order of the highest-ranking application to the lowest-ranking application until all available funds have been distributed. HUD will not fund any portion of an application that is ineligible for funding under the regular HOME program requirements, or which does not meet the requirements of this NOFA. If funds remain after all selections have been made, these funds may be combined with any additional recaptured HOME CHDO set-aside funds that become available within 24 months of the announcement of awards under this NOFA, and awarded to the highest ranking un-funded, eligible application(s) in this competition.

C. Applicant Debriefing. Beginning not less than 30 days after the public announcement of awards under this NOFA and not longer than 120 days, upon receiving a written request from an applicant, HUD will provide a debriefing to that applicant. Materials provided by HUD during the debriefing will be the applicant's final score, the HUD evaluator's final comments for Selection Criterion 3, and HUD's calculations for the pre-scored Selection Criterion 1 and Selection Criterion 2. Applicants requesting to be debriefed must send a written request to Cliff Taffet, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, Room 7164, 451 Seventh Street, SW., Washington, DC 20410–7000.

D. Requirements. The following specific requirements apply to this ''Competitive Reallocation of CHDO Funds to Provide Energy Efficient and Environmentally-Friendly Housing for Low-Income Families''.

1. You, the applicant, must be a HOME Participating Jurisdiction (PJ) that is currently participating in the regular HOME program and has received an annual HOME formula allocation each year since FY 2004.

2. The housing projects funded under this NOFA must be carried out by non-profit organizations in your jurisdiction that you have determined currently meet the definition of Community Housing Development Organization (CHDO).

3. The only eligible projects under this NOFA are HOME-eligible CHDO set-aside projects that are permitted under the regular HOME regulations, and that qualify for and will receive Energy Star Certification by an independent Home Energy Rater (HER) upon completion.

E. Factors for Award. HUD will review and rate all eligible application submissions using the Threshold Criterion, three Selection Criteria and related Application Submission Requirements described below. The maximum number of points for this competition is 100. No RC/EZ/EC bonus points are given.

1. Threshold Criterion. All CHDO projects developed with HOME funds provided under this NOFA must qualify for and receive Energy Star Certification by an independent Home Energy Rater (HER) upon completion.

a. Submission Requirements for Threshold Criterion. Applicants must submit a brief Threshold Criterion narrative that describes the proposed CHDO project(s) that will be developed using funds provided under this NOFA. The narrative must: (1) Commit you (the HOME Participating Jurisdiction) to using any HOME funds awarded under this competition only for the production of Energy Star Certified units; (2) specify the total projected number of housing units to be produced that will be Energy Star certified and, of that number, the total number of HOME-assisted units; and (3) describe your process for ensuring that all CHDO housing units developed with HOME funds provided under this NOFA will receive Energy Star Certification upon completion, and provide a clear statement that all units developed using funds provided through this competition will, at a minimum, meet this standard. To the extent such information is known at the time of application, the narrative also should identify the CHDO that will own, develop or sponsor the project; the type of development (new construction or substantial rehabilitation, homebuyer or rental); the total project cost; the total HOME cost; and any other descriptive project information. There is a maximum limit of 1 page (letter-sized, single-sided) for your response to the Threshold Criterion.

2. Selection Criterion 1: Commitment (up to 25 points—pre-scored). This criterion rates the applicant's demonstrated commitment to expand the supply of affordable rental and homebuyer housing, as indicated by the additional number of units of affordable housing made available through production or rehabilitation within the previous two years, making adjustment for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under HOME through production or

rehabilitation in relation to the amounts made available under HOME. In scoring this criterion, HUD used Integrated Disbursement and Information System (IDIS) reports consisting of information provided by the PJs on the number of HOME-assisted rental units and homebuyer units completed over the past two years (from January 1, 2005 through December 31, 2007), adjusting for variations in construction costs and the size of HOME allocations. The PJs were then rank-ordered from highest to lowest by the adjusted number of rental units and homebuyer units completed. PJs with no HOME-assisted rental or homebuyer units completed received zero points. The remaining PJs were divided into 25 equal groups, adjusted for ties, with the group having the most such units receiving 25 points, the next group receiving 24 points and so on. (See Appendix 1 for the score assigned to your PJ for Selection Criterion 1.)

a. Submission Requirements for Selection Criterion 1. No submission required.

3. Selection Criterion 2: Actions (up to 50 points—pre-scored). This criterion rates the applicant's actions to address each of the following four parts. Each part has been pre-scored by HUD.

a. Part A (up to 15 points—pre-scored). Direct funds made available under HOME to benefit very low-income families, with a range of incomes, in numbers that exceed the income-targeting requirements of HOME, with extra consideration given for activities that expand the supply of affordable housing for low-income families whose incomes do not exceed 30 percent of the median income for the area (i.e., extremely low-income), as determined by HUD. In scoring this part, HUD used Integrated Disbursement and Information System (IDIS) reports consisting of information provided by the PJs on the percentage of their completed units over the period of their participation in the HOME Program occupied by very low- and extremely low-income households, with double weighting given the extremely low-income segment. The PJs were then rank-ordered from highest to lowest by the weighted percentage of units occupied by the very low- and extremely low-income households. PJs with fewer than 20 units indicated as being occupied by these households or with less than 70 percent of completed rental units occupied received zero points. The remaining PJs were divided into 15 equal groups, adjusted for ties, with the group having the highest adjusted percentage receiving 15 points, the next group receiving 14 points and so on. (See Appendix 1 for the score assigned to your PJ for part A of Selection Criterion 2.)

(1) Submission Requirements for Selection Criterion 2, part A. No submission required. *b. Part B (up to 10 points—pre-scored).* Provide matching resources in excess of funds required under the HOME requirements. In scoring this part, HUD used HUD Field Office reports on the status of PJs in meeting their regular HOME Program match requirement for the past two completed reporting periods. Those PJs having met or exceeded their match liability over this period received 10 points. Those PJs not having met their match liability in one or more of the past two completed reporting periods received zero points. (See Appendix 1 for the score assigned to your PJ for part B of Selection Criterion 2.)

(1) Submission Requirements for Selection Criterion 2, part B. No submission required.

c. Part C (up to 15 points—pre-scored). Stimulate a high degree of participation in development by the private sector, including non-profit organizations. In scoring this part, HUD used Integrated Disbursement and Information System (IDIS) reports consisting of information provided by the PJs to determine the percentage of completed CHDO disbursements to all CHDO reservations since the inception of the PJs' HOME Program. The focus was on completed CHDO projects in this part since funds awarded in this competition must be used by CHDOs for eligible CHDO set-aside projects. The PJs were then ranked highest to lowest by the percentage of completed CHDO disbursements to all CHDO reservations. PJs with disbursements, but no completed rental projects received zero points. The remaining PJs were divided into 15 equal groups, adjusted for ties, with the group having the highest percentage receiving 15 points, the next group receiving 14 points and so on. (See Appendix 1 for the score assigned to your PJ for part C of Selection Criterion 2.)

(1) Submission Requirements for Selection Criterion 2, part C. No submission required.

d. Part D (up to 10 points—pre-scored). Stimulate a high degree of investment in development by the private sector, including non-profit organizations. In scoring this part, HUD used Integrated Disbursement and Information System (IDIS) reports consisting of information provided by the PJs to determine the extent to which, in percentages, each PJ was leveraging private funds with HOME dollars invested in completed projects. The PJs were then rank-ordered from highest to lowest by the leveraging percentage. PJs with no leveraging indicated in IDIS, or less than $50,000 in HOME funds invested overall in completed projects, received zero points. The remaining PJs were divided into 10 equal groups, adjusted for ties, with the group having the highest percentage receiving 10 points, the next group receiving 9 points and so on. (See Appendix 1 for the score assigned to your PJ for part D of Selection Criterion 2.)

(1) Submission Requirements for Selection Criterion 2, part D. No submission required.

4. Selection Criterion 3: Policies (up to 25 points—rated). This criterion rates the degree to which the applicant is pursuing policies that result in the creation of energy efficient and environmentally-friendly (Green) housing that is affordable to low-income families, using design and technology models that can be replicated. This criterion also examines the degree to which the applicant is pursuing policies that remedy the effects of discrimination and improve housing opportunities for disadvantaged minorities. This criterion has five parts.

a. Part A (up to 21 points). Make housing more affordable through the use of energy efficient and environmentally-friendly (Green) designs, technologies and policies. Rating points will be assigned based on the degree to which the following energy efficient and Green elements will be incorporated into the applicant's project design. These elements are consistent with the Enterprise Foundation's ''Green Communities Criteria Checklist''. More information about the Enterprise Green Communities initiative can be found at *http://www.greencommunitiesonline.org/*. The National Association of Homebuilders Research Center (NAHBRC) has also developed model Green homebuilding guidelines which can be found at *http://www.nahbrc.org/greenguidelines/*.

The elements have been divided into six subsections. Subsections (1), (2), (3), (5) and (6) have ''Minimum Requirements'' that must be met in order to receive rating points for that subsection. Provided the minimum requirements in a subsection have been met, applicants can receive additional rating points for incorporating ''Additional Elements'', as described in each subsection below. Applicants that fail to commit to incorporate all of a subsection's Minimum Requirements will receive zero points for that entire subsection.

(1) Energy Efficiency and Renewable Energy (up to 7 points)

(a) Minimum Requirements. As noted under the Threshold Criterion, above, all CHDO projects developed with HOME funds provided under this NOFA must qualify for and receive Energy Star Certification by an independent Home Energy Rater (HER) upon completion. Up to seven points will be provided to projects that exceed the standard for Energy Star Certified new homes, as outlined under (b) and (c), below.

(b) Additional Elements: Energy Efficiency (up to 3 points). Provided the Energy Star Certification minimum requirement is met, up to three points will be awarded for projects that incorporate one or more of the following Energy Efficient elements. One point will be awarded for each element up to the maximum of three points.

(i) *Pressure Balancing.* All rooms within the conditioned space, except bath and laundry, will not exceed +/−3 pascals pressure differential with respect to the outside when interior doors are closed and the air handler is operating.

(ii) *Energy Star Appliances.* Install only Energy Star labeled appliances.

(iii) *Energy Efficient Lighting.* Install Energy Star labeled lighting fixtures in all interior units, use Energy Star or high-efficiency commercial grade fixtures in all common areas, and install daylight sensors or timers on all outdoor lighting.

(c) Additional Elements: Renewable Energy (4 points). Provided the Energy Star Certification minimum requirement is met, four points will be awarded for projects that incorporate any one of the following four Renewable Energy elements:

(i) *Photovoltaic Panels.* Install photovoltaic panels to provide at least 10 percent of the project's estimated electricity demand.

(ii) *Solar Thermal.* Install solar hot water (thermal) heating to provide at least 50 percent of the project's estimated domestic hot water and 10 percent of the project's hydronic space heating needs.

(iii) *Wind Energy.* Install wind energy technology to provide at least 10 percent of the project's electricity demand.

(iv) *Geothermal.* Install geothermal energy technology to provide at least 20 percent of the project's energy needs.

(2) Sustainable Site Design (up to 3 points)

(a) Minimum Requirements (2 points). Two points will be awarded for projects that meet all of the following Sustainable Site Design minimum requirements:

(i) *Proximity to Existing Development.* Locate project on a site(s) with access to existing roads, water, sewers and other infrastructure within or at least 25 percent contiguous to existing development.

(ii) *Compact Development (for new construction).* Achieve densities of at least 6 units per acre for detached/semi-detached houses; 10 units per acre for town homes; 15 units per acre for apartments.

(iii) *Sidewalks and Pathways.* Include sidewalks or suitable pathways within a multifamily property or single-family subdivision linking residential development to public spaces, open spaces and adjacent development.

(b) Additional Elements (1 point). Provided all of the Sustainable Site Design minimum requirements are met, one point will be awarded for projects that incorporate one or more of the following Sustainable Site Design elements:

(i) *Proximity to Services (for new construction).* Locate project within one-quarter mile radius of public transit service, or one-half mile radius from a fixed rail or ferry station.

(ii) *Compact Development (for new construction).* Increase average minimum densities to meet or exceed: 7 units per acre for detached/semi-detached; 12 units per acre for town homes; and 20 units per acre for apartments.

(iii) *Surface water management.* Capture the first one-half inch of rainfall that falls in a 24-hour period and label all storm drains or storm inlets to clearly indicate where the drain or inlet leads.

(3) Water Conservation (up to 3 points)

(a) Minimum Requirements (2 points). Two points will be awarded for projects that meet the following Water Conservation minimum requirement:

(i) *Water-conserving Fixtures.* Install only water-conserving fixtures with the following specifications: toilets—1.6 gallons per flush; showerheads—2.0 gallons per minute; kitchen faucets—2.0 gallons per minute; bathroom faucets—2.0 gallons per minute.

(b) Additional Elements (1 point). Provided the Water Conservation minimum requirement is met, one point will be awarded for projects that incorporate one or both of the following Water Conservation elements:

(i) *Water-conserving Fixtures.* Install on demand water heater at point of use.

(ii) *Efficient Irrigation.* If irrigation is necessary, use recycled gray water, roof water, collected site run-off or an irrigation system that will deliver up to 95 percent of the water supplied.

(4) Use of Environmentally Beneficial Materials and Practices (up to 3 points)

(a) Minimum Requirements. None

(b) Additional Elements (up to 3 points). Up to three points will be awarded for projects that incorporate one or more of the following Environmentally Beneficial Materials and Practices elements. One point will be awarded for each element up to the maximum of three points.

(i) *Renewable Source or Recycled Content Materials.* Use material from renewable sources (soy-based insulation, bamboo, wood-based products), or materials with recycled content.

(ii) *Certified, Salvaged and Engineered Wood.* Use at least 50 percent (by cost or value) wood products and materials that are certified in accordance with the Forest Stewardship Council, salvaged wood, or engineered framing materials.

(iii) *Water-permeable Paved Areas.* Use water-permeable materials in 50 percent or more of walkways and in 50 percent or more of parking areas.

(iv) *Construction Waste Management.* Develop and implement a construction waste management plan to reduce the amount of material sent to the landfill.

(5) Healthy Homes (up to 4 points)

(a) Minimum Requirements (2 points). Two points will be awarded for projects that meet *all* of the following Healthy Homes minimum requirements:

(i) *Low/no VOC Paint, Adhesives and Sealants.* Specify that all interior paints, primers, adhesives and sealants must contain low or no VOCs.

(ii) *Formaldehyde-free Composite Wood.* Do not use any composite wood that has exposed particleboard (which contains added urea-formaldehyde), unless the exposed area has been sealed.

(iii) *Mold Control.* Do not use mold-propagating materials such as vinyl wallpaper and unsealed grout; in wet areas, use materials that have smooth, durable, cleanable surfaces.

(iv) *Water Heater Venting.* Specify direct vented or combustion sealed water heaters if the heater is located in a conditioned space.

(b) Additional Elements (up to 2 points). Provided all of the Healthy Homes minimum requirements are met, up to two points will be awarded for projects that incorporate one or more of the following Healthy Homes elements. One point will be awarded for each element up to the maximum of two points.

(i) *Energy Star Exhaust Fans.* Install in each bathroom an Energy Star-labeled fan that exhausts to the outdoors and that either runs continuously or is controlled by a humidistat sensor or timer; install Energy Star-labeled power vented kitchen fans or range hoods that exhaust to the exterior; install exhaust

for clothes dryers directly to the outdoors.

(ii) *Efficient Ventilation (new construction).* Install a ventilation system for the dwelling unit that provides 15 cubic feet per minute of fresh air, per occupant. Assume two occupants in an efficiency or one bedroom unit, and an additional occupant for each additional bedroom. Where higher densities are known, increase the rate by 7.5 cfm for each additional person. (See ASHRAE 62.2–2004, Chapter 4)

(iii) *Mold Prevention.* Use tankless hot water heaters or install conventional hot water heaters in rooms with drains or catch pans piped to the exterior of the dwelling and with non-water sensitive floor coverings; insulate exposed cold water pipes in climates and building conditions susceptible to moisture condensation.

(iv) *Basements and Concrete Slabs: Vapor Barrier and Water Drainage.* Provide a vapor barrier and four inches of gravel for a capillary break under all slabs; provide drainage of water to the lowest level of concrete away from windows, walls and foundations; waterproof foundation walls on the exterior to avoid moisture migration.

(v) *Garage Isolation.* Provide a continuous air barrier between the conditioned (living space) and any unconditioned garage space; in single-family homes with attached garages, install a CO alarm inside the house on the wall that is attached to the garage or is outside the sleeping area.

(6) Resident Education (1 point).

(a) Minimum Requirements (1 point). One point will be awarded for projects that incorporate the following Residential Education minimum requirement:

(i) *Instruction Manual.* Provide a manual that includes the following: a routine maintenance plan; instructions for all appliances, HVAC operation, water-system turnoffs, lighting equipment and other systems that are part of each occupancy unit; an occupancy turnover plan that describes in detail the process of educating the occupant about proper use and maintenance of all building systems; and information on how to maintain the Green features of the site, including paving materials and landscaping.

(b) Additional Elements. None.

(7) Recommended Energy Efficient and Green Elements (no points).

HUD strongly recommends that applicants incorporate additional energy efficient and Green elements into their project designs. However, the inclusion or exclusion of these elements will not be considered in rating an applicant's submission. The recommended elements are listed in Appendix 3.

In addition to the elements identified under part A, above, rating points will be assigned based upon whether the applicant is pursuing policies that:

b. Part B (up to 1 point). Remove or ameliorate any negative effects that public policies identified by you in your Consolidated Plan may have on the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction.

c. Part C (up to 1 point). Preserve the affordability of privately-owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment.

d. Part D (up to 1 point). Increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities.

e. Part E (up to 1 point). Remedy the effects of discrimination and improve housing opportunities for disadvantaged minorities.

f. Submission Requirements for Selection Criterion 3. Applicants must submit a clear and concise response to each of the five parts A through E listed above. Each page of the submission must be numbered.

(1) For part (A), subsections (1)–(6), you, the applicant, must indicate with an ''X'' or a checkmark, each Minimum Requirement and Additional Element that you commit to incorporate into your proposed project design and construction. Leave a blank next to any Minimum Requirement or Additional Element that you do not commit to incorporate. You may reproduce the list of Requirements and Elements in your application to facilitate your response. Please note that if your completed project does not incorporate the minimum requirements or the additional elements you committed to in your submission, then you will become subject to the repayment of funds awarded under this HOME competition. There is a maximum limit of five pages (letter-sized, single-sided) for your response to part (A).

(2) For parts (B) through (E), you, the applicant, must identify the specific policies you are pursuing, the actions you have taken or will take to implement each policy, the effects of each action on achieving each policy objective, the current implementation status, and the completion timeline. There is a maximum limit of four pages (letter-sized, single sided) for your responses to parts (B) through (E).

F. Final Ranking and Conditional Awards. The points received by each applicant for the three selection criteria will be totaled and the applicants will be rank ordered from highest to lowest score. HUD will award $250,000 to the applicant receiving the highest score. HUD will award $250,000 to the applicant receiving the next highest score, and so on in rank order, until the balance of funds remaining is less than $250,000. Should two or more applicants have tie scores for the final award, the applicants will be selected in the order of: (1) The applicant receiving the highest score for Selection Criterion 3 part A: Make housing more affordable through the use of energy efficient and environmentally-friendly (Green) designs, technologies and policies; (2) the applicant receiving the highest score for Selection Criterion 3 part A(1): Energy Efficiency and Renewable Energy; and (3) the applicant proposing to produce the greatest number of Energy Star Certified housing units. The awards are conditional pending execution of a grant agreement between HUD and the HOME Participating Jurisdiction that is the applicant. The HOME funds awarded under this NOFA may be combined with other federal funds, including regular HOME Program funds, and with state, local or private funding to develop the required energy efficient and environmentally-friendly (Green) housing for low-income families.

VI. Application Requirements and Checklist for Application Submission

The application consists of the items listed below. The standard forms that are applicable to this funding (collectively referred to as the ''standard forms'') can be found in Appendix 2. The following checklist helps to ensure that all of the required items have been submitted.

____ HUD–424, Application for Federal Assistance signed by the authorized representative of the Participating Jurisdiction applying for the funds

____ Table of Contents

Narrative Statements Addressing:

____ Threshold Criterion Narrative (maximum 1 page)

____ Selection Criterion 3 Part A, subsections (1)–(6)—Narrative Checklist (maximum 5 pages)

____ Selection Criterion 3 Parts (B), (C), (D), (E)—Narratives (maximum 4 pages)

Forms:

____ HUD–2880, Applicant/Recipient Disclosure/Update Report

____ HUD–2993, Acknowledgment of Application Receipt

The standard form HUD 424 can also be downloaded from: *http://*

www.hud.gov/offices/adm/hudclips/forms/files/sf424.doc.

The standard forms HUD–2880 and HUD–2993 can also be downloaded from: *http://www.hud.gov/offices/adm/hudclips/forms/.*

VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information the applicant may want to provide. HUD may contact you, the applicant, to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any of the rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. HUD will notify the applicant in writing and describe the item that requires clarification or the technical deficiency that must be corrected. HUD will notify applicants by facsimile or by USPS, return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies to HUD within 14 calendar days of the date of receipt of the HUD notification. If the due date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

VIII. Environmental Requirements

This NOFA provides funding under 24 CFR part 92 and does not alter the environmental requirements of part 92. Accordingly, pursuant to 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321). Activities assisted with HOME funds provided under this NOFA are subject to the environmental review provisions set out at 24 CFR 92.352, including the National Environmental Policy Act of 1969 and related federal environmental authorities. NOFA applicants are cautioned that no federal or non-federal funds or assistance which limits reasonable choices or could produce an adverse environmental impact may be committed to a project until all required environmental reviews and notifications have been completed by a unit of general local government or State and until HUD approves a recipient's request for release of funds under the environmental provisions contained in 24 CFR part 58.

IX. Authority

The funding made available under this NOFA is authorized by section 217(c) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (42 U.S.C. 12704 *et seq.*).

Dated: May 7, 2008.

Nelson R. Bregón, General Deputy Assistant,

Secretary for Community Planning and Development.

BILLING CODE 4210–67–P

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
ABILENE	TX	7	0	10	12	6	0	35
ADAMS COUNTY CONSORTIUM	CO	11	8	10	10	10	0	49
AGUADILLA	PR	9	0	10	3	3	0	25
AKRON	OH	24	9	10	10	10	0	63
ALABAMA	AL	16	5	10	15	2	0	48
ALAMEDA COUNTY CONSORTIUM	CA	16	9	10	10	5	0	50
ALASKA	AK	5	7	10	15	3	0	40
ALBANY	GA	13	5	10	3	1	0	32
ALBANY	NY	24	6	10	12	6	0	58
ALBUQUERQUE	NM	4	15	10	5	8	0	42
ALEXANDRIA	LA	15	13	10	15	2	0	55
ALEXANDRIA	VA	25	14	10	15	5	0	69
ALHAMBRA	CA	11	3	10	2	6	0	32
ALLEGHENY COUNTY CONSORTIUM	PA	14	2	10	2	2	0	30
ALLENTOWN	PA	12	6	10	6	5	0	39
ALTOONA	PA	25	12	10	11	5	0	63
AMARILLO	TX	11	8	10	12	5	0	46
AMHERST CONSORTIUM	NY	12	3	10	14	2	0	41
ANAHEIM	CA	8	5	10	7	3	0	33
ANCHORAGE	AK	0	10	10	3	5	0	28
ANDERSON	IN	24	12	10	15	9	0	70
ANN ARBOR	MI	15	15	10	11	4	0	55
ANNE ARUNDEL COUNTY	MD	15	14	10	14	9	0	62
APPLE VALLEY CONSORTIUM	CA	0	0	10	0	0	0	10
ARAPAHOE COUNTY CONSORTIUM	CO	0	0	10	5	10	0	25
ARECIBO	PR	18	0	10	0	9	0	37
ARIZONA	AZ	10	10	10	12	7	0	49
ARKANSAS	AR	8	9	10	11	6	0	44
ARLINGTON	TX	1	0	10	6	2	0	19
ARLINGTON COUNTY	VA	19	8	10	14	9	0	60
ASHEVILLE CONSORTIUM	NC	25	3	10	10	8	0	56
ATHENS-CLARKE	GA	16	14	10	8	1	0	49
ATLANTA	GA	22	1	10	1	9	0	43
ATLANTIC CITY	NJ	7	0	10	11	2	0	30
ATLANTIC COUNTY CONSORTIUM	NJ	6	0	10	13	3	0	32
AUBURN CONSORTIUM	ME	4	0	10	2	10	0	26
AUGUSTA	GA	8	3	10	1	4	0	26
AURORA	CO	2	0	10	2	5	0	19
AUSTIN	TX	14	5	10	12	6	0	47
BABYLON TOWNSHIP	NY	7	12	10	10	4	0	43
BAKERSFIELD	CA	15	11	10	5	4	0	45
BALDWIN PARK	CA	23	15	10	6	0	0	54
BALTIMORE	MD	6	12	10	6	3	0	37
BALTIMORE COUNTY	MD	14	11	10	3	9	0	47
BARNSTABLE COUNTY CONSORTIUM	MA	25	9	10	8	10	0	62
BATON ROUGE	LA	22	5	10	5	5	0	47
BATTLE CREEK	MI	5	0	10	14	5	0	34
BAY CITY	MI	22	15	10	14	4	0	65
BAYAMON	PR	8	0	10	1	6	0	25
BEAUMONT	TX	16	5	10	13	2	0	46
BEAVER COUNTY	PA	21	3	10	15	3	0	52
BELLFLOWER	CA	25	1	10	2	10	0	48
BELLINGHAM	WA	3	15	10	2	2	0	32

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
BERGEN COUNTY	NJ	9	7	10	11	3	0	40
BERKELEY	CA	11	13	10	5	4	0	43
BERKS COUNTY	PA	13	5	10	10	8	0	46
BETHLEHEM	PA	14	8	10	8	3	0	43
BEXAR COUNTY	TX	11	12	10	3	10	0	46
BILLINGS	MT	25	12	10	10	10	0	67
BINGHAMTON	NY	22	7	10	14	1	0	54
BIRMINGHAM	AL	18	9	10	3	7	0	47
BLOOMINGTON	IN	11	5	10	15	7	0	48
BOISE	ID	3	10	10	3	9	0	35
BOSTON	MA	14	8	10	10	10	0	52
BOULDER CONSORTIUM	CO	2	8	10	7	9	0	36
BRAZORIA COUNTY	TX	2	0	10	5	1	0	18
BREVARD COUNTY CONSORTIUM	FL	9	5	10	11	6	0	41
BRIDGEPORT	CT	6	15	10	2	3	0	36
BRISTOL CONSORTIUM	TN	1	0	10	1	9	0	21
BROCKTON	MA	7	13	10	11	5	0	46
BROWARD COUNTY CONSORTIUM	FL	9	9	10	3	7	0	38
BROWNSVILLE	TX	16	6	10	3	10	0	45
BRYAN	TX	2	0	10	13	3	0	28
BUCKS COUNTY CONSORTIUM	PA	17	6	10	7	4	0	44
BUFFALO	NY	21	9	10	2	3	0	45
BURBANK	CA	13	15	10	8	2	0	48
BURLINGTON	VT	17	14	10	5	10	0	56
BURLINGTON COUNTY CONSORTIUM	NJ	24	7	10	14	6	0	61
BUTLER COUNTY CONSORTIUM	OH	2	0	10	5	0	0	17
CAGUAS	PR	19	5	10	5	4	0	43
CALIFORNIA	CA	11	5	10	10	5	0	41
CAMBRIDGE	MA	19	7	10	6	9	0	51
CAMDEN	NJ	25	11	10	8	8	0	62
CAMDEN COUNTY CONSORTIUM	NJ	6	14	10	11	8	0	49
CANTON	OH	25	9	10	6	9	0	59
CAROLINA	PR	0	0	10	1	9	0	20
CEDAR RAPIDS	IA	18	14	10	6	7	0	55
CHARLESTON	SC	25	10	10	15	10	0	70
CHARLESTON CONSORTIUM	WV	21	1	10	5	1	0	38
CHARLESTON COUNTY	SC	6	14	10	3	10	0	43
CHARLOTTE CONSORTIUM	NC	25	5	10	11	7	0	58
CHARLOTTESVILLE CONSORTIUM	VA	4	7	10	5	4	0	30
CHATTANOOGA	TN	18	10	10	8	2	0	48
CHESAPEAKE	VA	19	11	10	12	8	0	60
CHESTER	PA	19	0	10	14	7	0	50
CHESTER COUNTY	PA	21	2	10	9	8	0	50
CHESTERFIELD COUNTY	BR	2	0	10	5	5	0	22
CHICAGO	IL	23	10	10	14	2	0	59
CHICO	CA	10	0	10	8	8	0	36
CHULA VISTA	CA	12	3	10	5	7	0	37
CINCINNATI	OH	13	9	10	6	7	0	45
CLACKAMAS COUNTY	OR	10	11	10	13	7	0	51
CLARK COUNTY CONSORTIUM	NV	20	7	10	13	10	0	60
CLARK COUNTY CONSORTIUM	WA	5	13	10	7	6	0	41
CLARKSVILLE	TN	1	0	10	1	3	0	15
CLAYTON COUNTY	GA	6	0	10	14	5	0	35

*_Score for this factor may be reduced based on updates obtained from field offices

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
CLEARWATER	FL	3	0	10	1	10	0	24
CLEVELAND	OH	23	7	10	12	9	0	61
COBB COUNTY CONSORTIUM	GA	11	12	10	2	5	0	40
COLLEGE STATION	TX	4	0	10	5	8	0	27
COLLIER COUNTY	FL	1	0	10	0	0	0	11
COLORADO	CO	9	5	10	5	10	0	39
COLORADO SPRINGS	CO	4	13	10	3	7	0	37
COLUMBIA	MO	11	3	10	10	4	0	38
COLUMBIA	SC	18	14	10	7	1	0	50
COLUMBUS	OH	25	9	10	8	9	0	61
COLUMBUS-MUSCOGEE	GA	11	11	10	7	1	0	40
COMPTON	CA	1	0	10	1	10	0	22
CONCORD CONSORTIUM	NC	12	6	10	10	1	0	39
CONNECTICUT	CT	21	11	10	8	4	0	54
CONTRA COSTA COUNTY CONSORTIUM	CA	14	13	10	7	8	0	52
COOK COUNTY CONSORTIUM	IL	18	8	10	10	7	0	53
CORPUS CHRISTI	TX	21	11	10	9	7	0	58
CORVALLIS	OR	12	11	10	5	4	0	42
COSTA MESA	CA	2	5	10	13	3	0	33
COVINGTON	KY	3	0	10	7	3	0	23
CUMBERLAND COUNTY	NC	24	2	10	5	6	0	47
CUYAHOGA COUNTY CONSORTIUM	OH	12	6	10	1	10	0	39
DAKOTA COUNTY CONSORTIUM	MN	13	9	10	7	10	0	49
DALLAS	TX	20	10	10	7	10	0	57
DALLAS COUNTY	TX	5	15	10	6	0	0	36
DALY CITY	CA	3	0	10	0	10	0	23
DANE COUNTY	WI	5	0	10	1	2	0	18
DANVILLE	VA	6	0	10	14	1	0	31
DAUPHIN COUNTY	PA	7	0	10	5	3	0	25
DAVENPORT	IA	20	6	10	15	9	0	60
DAVIS	CA	18	5	10	10	8	0	51
DAYTON CONSORTIUM	OH	8	11	10	11	7	0	47
DAYTONA BEACH	FL	13	1	10	8	9	0	41
DECATUR	IL	20	15	10	13	2	0	60
DEKALB COUNTY	GA	13	2	10	10	8	0	43
DELAWARE	DE	2	3	10	7	3	0	25
DELAWARE COUNTY	PA	13	6	10	13	3	0	45
DENTON	TX	3	0	10	8	6	0	27
DENVER	CO	10	12	10	5	9	0	46
DES MOINES	IA	21	14	10	12	9	0	66
DETROIT	MI	25	10	10	9	2	0	56
DISTRICT OF COLUMBIA	DC	14	0	10	1	10	0	35
DOWNEY	CA	0	0	10	2	0	0	12
DULUTH	MN	17	15	10	12	8	0	62
DUPAGE COUNTY CONSORTIUM	IL	22	7	10	8	3	0	50
DURHAM CONSORTIUM	NC	3	1	10	2	1	0	17
DUTCHESS COUNTY CONSORTIUM	NY	17	2	10	5	9	0	43
EAST CHICAGO	IN	1	0	10	5	4	0	20
EAST CLEVELAND	OH	3	0	10	1	2	0	16
EAST ORANGE	NJ	16	10	10	1	8	0	45
EAST ST. LOUIS	IL	8	14	10	2	5	0	39
EAU CLAIRE	WI	11	5	10	13	1	0	40
EL CAJON	CA	0	0	10	9	6	0	25

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
EL MONTE	CA	5	12	10	5	4	0	36
EL PASO	TX	3	5	10	15	1	0	34
ELIZABETH	NJ	18	9	10	6	6	0	49
ELMIRA	NY	2	0	10	3	1	0	16
ERIE	PA	19	2	10	11	7	0	49
ERIE COUNTY CONSORTIUM	NY	21	5	10	15	8	0	59
ESCAMBIA COUNTY CONSORTIUM	FL	5	8	10	12	5	0	40
ESCONDIDO	CA	11	5	10	15	9	0	50
ESSEX COUNTY CONSORTIUM	NJ	15	14	10	7	2	0	48
EUGENE CONSORTIUM	OR	23	7	10	9	6	0	55
EVANSTON	IL	8	0	10	5	7	0	30
EVANSVILLE	IN	9	6	10	14	3	0	42
FAIRFAX COUNTY	VA	20	5	10	3	2	0	40
FALL RIVER	MA	16	9	10	6	5	0	46
FARGO	ND	16	15	10	13	10	0	64
FAYETTEVILLE	NC	24	1	10	5	5	0	45
FITCHBURG CONSORTIUM	MA	3	14	10	5	3	0	35
FLINT	MI	12	3	10	5	10	0	40
FLORIDA	FL	19	1	10	5	9	0	44
FONTANA	CA	23	3	10	12	0	0	48
FORT BEND COUNTY	TX	0	0	10	0	0	0	10
FORT COLLINS	CO	22	7	10	14	10	0	63
FORT LAUDERDALE	FL	5	1	10	7	6	0	29
FORT SMITH	AR	19	0	10	9	5	0	43
FORT WAYNE	IN	16	9	10	11	7	0	53
FORT WORTH	TX	5	15	10	2	2	0	34
FRANKLIN COUNTY	OH	25	15	10	7	10	0	67
FRESNO	CA	3	6	10	2	9	0	30
FRESNO COUNTY	CA	2	6	10	5	6	0	29
FULLERTON	CA	3	11	10	14	5	0	43
FULTON COUNTY CONSORTIUM	GA	3	0	10	2	8	0	23
GAINESVILLE	FL	17	0	10	6	9	0	42
GALVESTON	TX	2	0	10	5	0	0	17
GARDEN GROVE	CA	5	5	10	12	7	0	39
GARLAND	TX	7	0	10	7	4	0	28
GARY	IN	20	2	10	11	6	0	49
GASTONIA CONSORTIUM	NC	4	0	10	2	2	0	18
GENESEE COUNTY	MI	22	2	10	14	2	0	50
GEORGIA	GA	14	3	10	13	3	0	43
GLENDALE	CA	14	5	10	14	3	0	46
GLOUCESTER COUNTY CONSORTIUM	NJ	5	12	10	3	2	0	32
GOLDSBORO	NC	1	0	10	1	4	0	16
GRAND PRAIRIE	TX	3	0	10	1	2	0	16
GRAND RAPIDS	MI	14	9	10	8	5	0	46
GREAT FALLS	MT	25	7	10	6	4	0	52
GREELEY	CO	17	5	10	15	6	0	53
GREEN BAY	WI	6	14	10	15	4	0	49
GREENSBORO CONSORTIUM	NC	20	2	10	13	7	0	52
GREENVILLE	SC	18	13	10	5	3	0	49
GREENVILLE CONSORTIUM	NC	9	0	10	8	7	0	34
GREENVILLE COUNTY	SC	13	0	10	3	4	0	30
GUAYNABO	PR	19	0	10	0	9	0	38
GULFPORT CONSORTIUM	MS	1	0	10	0	0	0	11

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
GWINNETT COUNTY	GA	5	0	10	2	10	0	27
HAMILTON	OH	12	15	10	6	5	0	48
HAMILTON COUNTY	OH	3	11	10	14	4	0	42
HAMMOND	IN	6	0	10	6	3	0	25
HAMPTON	VA	19	1	10	10	4	0	44
HARFORD COUNTY	MD	5	0	10	2	9	0	26
HARLINGEN	TX	10	0	10	15	5	0	40
HARRIS COUNTY	TX	12	13	10	5	7	0	47
HARRISBURG	PA	14	6	10	14	2	0	46
HARTFORD	CT	25	9	10	8	3	0	55
HATTIESBURG	MS	10	0	10	10	4	0	34
HAWAII	HI	12	8	10	10	3	0	43
HAWTHORNE	CA	4	0	10	2	8	0	24
HENDERSON	NV	11	0	10	3	10	0	34
HENNEPIN COUNTY CONSORTIUM	MN	12	14	10	5	8	0	49
HENRICO COUNTY	VA	9	0	10	1	10	0	30
HIALEAH	FL	10	11	10	13	2	0	46
HIDALGO COUNTY	TX	13	0	10	11	9	0	43
HIGH POINT	NC	0	6	10	5	5	0	26
HILLSBOROUGH COUNTY	FL	13	5	10	5	10	0	43
HOLLYWOOD	FL	10	0	10	7	9	0	36
HOLYOKE CONSORTIUM	MA	17	5	10	9	7	0	48
HONOLULU	HI	21	10	10	12	2	0	55
HOUMA-TERREBONNE	LA	5	0	10	8	2	0	25
HOUSTON	TX	15	2	10	3	7	0	37
HOWARD COUNTY	MD	2	0	10	3	2	0	17
HUDSON COUNTY CONSORTIUM	NJ	18	5	10	7	2	0	42
HUNTINGTON BEACH	CA	24	1	10	9	1	0	45
HUNTINGTON CONSORTIUM	WV	18	12	10	2	2	0	44
HUNTINGTON PARK	CA	0	0	10	0	5	0	15
HUNTSVILLE	AL	25	10	10	2	3	0	50
IDAHO	ID	12	11	10	15	7	0	55
ILLINOIS	IL	17	5	10	13	2	0	47
INDEPENDENCE	MO	9	5	10	5	6	0	35
INDIANA	IN	13	11	10	13	7	0	54
INDIANAPOLIS	IN	22	9	10	14	4	0	59
INGLEWOOD	CA	0	0	10	0	0	0	10
IOWA	IA	18	9	10	15	6	0	58
IOWA CITY	IA	20	13	10	5	8	0	56
IRVINE	CA	3	0	10	5	10	0	28
IRVING	TX	6	0	10	8	7	0	31
IRVINGTON TOWNSHIP	NJ	22	0	10	1	6	0	39
ISLIP TOWNSHIP	NY	16	0	10	3	7	0	36
ITHACA	NY	5	0	10	2	3	0	20
JACKSON	MI	16	5	10	8	5	0	44
JACKSON	MS	14	0	10	3	2	0	29
JACKSON	TN	8	0	10	6	9	0	33
JACKSONVILLE-DUVAL	FL	18	10	10	1	6	0	45
JAMESTOWN	NY	3	5	10	5	3	0	26
JANESVILLE CONSORTIUM	WI	13	12	10	9	5	0	49
JEFFERSON COUNTY	AL	22	10	10	11	4	0	57
JEFFERSON COUNTY	CO	25	8	10	6	9	0	58
JEFFERSON COUNTY	MO	0	0	10	0	0	0	10

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
JEFFERSON COUNTY CONSORTIUM	NY	23	7	10	7	3	0	50
JEFFERSON PARISH CONSORTIUM	LA	10	11	10	11	6	0	48
JERSEY CITY	NJ	6	3	10	3	3	0	25
JOHNSON COUNTY CONSORTIUM	KS	1	0	10	6	1	0	18
JOHNSTOWN	PA	19	3	10	6	7	0	45
JOLIET	IL	24	5	10	12	10	0	61
KALAMAZOO	MI	20	10	10	13	5	0	58
KANSAS	KS	5	6	10	13	4	0	38
KANSAS CITY	KS	15	1	10	11	6	0	43
KANSAS CITY	MO	15	1	10	5	6	0	37
KENOSHA	WI	10	5	10	3	4	0	32
KENTUCKY	KY	12	9	10	15	4	0	50
KERN COUNTY	CA	15	6	10	12	4	0	47
KILLEEN	TX	18	12	10	15	7	0	62
KING COUNTY CONSORTIUM	WA	20	12	10	7	7	0	56
KITSAP COUNTY CONSORTIUM	WA	23	8	10	8	4	0	53
KNOX COUNTY	TN	4	0	10	2	2	0	18
KNOXVILLE	TN	14	13	10	9	3	0	49
LA CROSSE	WI	22	0	10	13	8	0	53
LAFAYETTE	LA	16	3	10	15	2	0	46
LAFAYETTE CONSORTIUM	IN	19	10	10	5	10	0	54
LAKE CHARLES	LA	7	0	10	5	3	0	25
LAKE COUNTY	IN	12	15	10	3	10	0	50
LAKE COUNTY	OH	23	9	10	11	8	0	61
LAKE COUNTY CONSORTIUM	IL	24	12	10	9	9	0	64
LAKELAND	FL	2	0	10	14	1	0	27
LAKEWOOD	CO	15	2	10	6	9	0	42
LANCASTER	PA	21	9	10	13	6	0	59
LANCASTER COUNTY	PA	20	7	10	9	3	0	49
LANSING	MI	18	12	10	13	6	0	59
LAREDO	TX	6	3	10	3	5	0	27
LAS CRUCES	NM	17	2	10	6	10	0	45
LAS VEGAS	NV	0	0	10	3	1	0	14
LAWRENCE	KS	7	0	10	13	2	0	32
LAWRENCE	MA	15	5	10	9	7	0	46
LAWTON	OK	8	8	10	14	5	0	45
LEE COUNTY	FL	9	0	10	15	8	0	42
LENOIR CONSORTIUM	NC	19	12	10	5	10	0	56
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT	KY	25	14	10	5	9	0	63
LIMA	OH	1	0	10	1	1	0	13
LINCOLN	NE	22	11	10	11	10	0	64
LITTLE ROCK	AR	20	9	10	8	4	0	51
LONG BEACH	CA	2	14	10	2	1	0	29
LONGVIEW	TX	6	0	10	2	0	0	18
LONGVIEW CONSORTIUM	WA	14	5	10	10	9	0	48
LORAIN	OH	19	14	10	7	9	0	59
LOS ANGELES	CA	14	7	10	6	5	0	42
LOS ANGELES COUNTY	CA	16	2	10	5	3	0	36
LOUISIANA	LA	23	3	10	10	4	0	50
LOUISVILLE	KY	23	8	10	8	6	0	55
LOWELL	MA	22	12	10	11	4	0	59
LUBBOCK	TX	14	2	10	11	1	0	38
LUZERNE COUNTY	PA	18	5	10	5	5	0	43

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
LYNCHBURG	VA	21	14	10	10	2	0	57
LYNN	MA	19	13	10	9	6	0	57
LYNWOOD	CA	22	12	10	5	4	0	53
LYON COUNTY CONSORTIUM	NV	18	3	10	5	5	0	41
MACOMB COUNTY CONSORTIUM	MI	2	0	10	6	4	0	22
MACON	GA	17	0	10	14	6	0	47
MADISON	WI	10	12	10	9	9	0	50
MADISON COUNTY	IL	10	10	10	13	8	0	51
MAINE	ME	5	2	10	11	9	0	37
MALDEN CONSORTIUM	MA	18	6	10	5	10	0	49
MANATEE COUNTY	FL	0	0	10	0	0	0	10
MANCHESTER	NH	13	6	10	10	6	0	45
MANSFIELD	OH	20	0	10	13	7	0	50
MARICOPA COUNTY CONSORTIUM	AZ	9	6	10	12	8	0	45
MARIN COUNTY	CA	1	15	10	1	10	0	37
MARION COUNTY CONSORTIUM	FL	8	0	10	0	8	0	26
MARYLAND	MD	7	12	10	11	1	0	41
MASSACHUSETTS	MA	21	8	10	14	9	0	62
MAYAGUEZ	PR	7	0	10	0	2	0	19
MCALLEN	TX	17	0	10	14	6	0	47
MCHENRY COUNTY	IL	5	13	10	5	2	0	35
MEMPHIS	TN	16	14	10	10	2	0	52
MERCED	CA	6	0	10	11	0	0	27
MERCER COUNTY CONSORTIUM	NJ	22	13	10	13	1	0	59
MIAMI	FL	6	5	10	2	9	0	32
MIAMI BEACH	FL	10	5	10	5	3	0	33
MIAMI-DADE COUNTY	FL	23	2	10	2	10	0	47
MICHIGAN	MI	21	7	10	11	3	0	52
MIDDLESEX COUNTY CONSORTIUM	NJ	13	13	10	3	3	0	42
MILWAUKEE	WI	18	12	10	12	6	0	58
MILWAUKEE COUNTY CONSORTIUM	WI	14	6	10	8	10	0	48
MINNEAPOLIS	MN	12	11	10	12	7	0	52
MINNESOTA	MN	22	11	10	13	2	0	58
MISSISSIPPI	MS	9	1	10	7	5	0	32
MISSOULA	MT	13	0	10	9	8	0	40
MISSOURI	MO	12	2	10	15	3	0	42
MOBILE	AL	17	15	10	12	3	0	57
MOBILE COUNTY	AL	1	0	10	5	6	0	22
MODESTO	CA	6	3	10	9	7	0	35
MONMOUTH COUNTY CONSORTIUM	NJ	7	14	10	11	3	0	45
MONROE	LA	16	5	10	3	1	0	35
MONROE COUNTY CONSORTIUM	NY	21	5	10	12	4	0	52
MONTANA	MT	13	11	10	11	5	0	50
MONTEBELLO	CA	0	0	10	3	0	0	13
MONTEREY PARK	CA	25	1	10	15	0	0	51
MONTGOMERY	AL	9	0	10	9	5	0	33
MONTGOMERY COUNTY	MD	16	6	10	3	1	0	36
MONTGOMERY COUNTY	OH	3	12	10	5	7	0	37
MONTGOMERY COUNTY	PA	23	5	10	2	7	0	47
MONTGOMERY COUNTY	TX	0	0	10	0	0	0	10
MORENO VALLEY	CA	22	13	10	1	0	0	46
MORRIS COUNTY CONSORTIUM	NJ	8	14	10	11	7	0	50
MOUNT VERNON	NY	2	0	10	5	9	0	26

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
MOUNTAIN VIEW	CA	19	14	10	15	10	0	68
MUNCIE	IN	7	9	10	15	8	0	49
MUSKEGON	MI	25	10	10	13	4	0	62
NASHUA	NH	6	5	10	0	10	0	31
NASHVILLE-DAVIDSON	TN	17	0	10	6	6	0	39
NASSAU COUNTY	NY	20	8	10	2	5	0	45
NATIONAL CITY	CA	6	0	10	1	0	0	17
NEBRASKA	NE	15	3	10	15	7	0	50
NEVADA	NV	19	9	10	12	10	0	60
NEW BEDFORD	MA	21	13	10	7	5	0	56
NEW BRITAIN	CT	20	8	10	9	7	0	54
NEW BRUNSWICK	NJ	6	0	10	5	4	0	25
NEW CASTLE COUNTY	DE	17	7	10	14	10	0	58
NEW HAMPSHIRE	NH	10	7	10	13	6	0	46
NEW HAVEN	CT	25	0	10	12	5	0	52
NEW JERSEY	NJ	22	8	10	9	4	0	53
NEW MEXICO	NM	10	5	10	7	9	0	41
NEW ORLEANS	LA	2	11	10	1	3	0	27
NEW ROCHELLE	NY	20	0	10	9	8	0	47
NEW YORK	NY	13	5	10	9	7	0	44
NEW YORK CITY	NY	15	11	10	9	1	0	46
NEWARK	NJ	22	2	10	7	8	0	49
NEWPORT NEWS	VA	18	8	10	10	5	0	51
NEWTON CONSORTIUM	MA	5	9	10	14	9	0	47
NIAGARA FALLS	NY	24	3	10	11	3	0	51
NORFOLK	VA	8	6	10	12	9	0	45
NORMAN	OK	6	0	10	1	2	0	19
NORTH CAROLINA	NC	21	5	10	11	5	0	52
NORTH DAKOTA	ND	9	13	10	14	4	0	50
NORTH LITTLE ROCK	AR	6	0	10	13	1	0	30
NORTH MIAMI	FL	0	0	10	0	0	0	10
NORWALK	CA	0	0	10	1	0	0	11
OAKLAND	CA	10	11	10	8	5	0	44
OAKLAND COUNTY	MI	2	0	10	6	2	0	20
OCEAN COUNTY CONSORTIUM	NJ	1	7	10	5	6	0	29
OCEANSIDE	CA	15	10	10	8	3	0	46
ODESSA	TX	10	0	10	14	5	0	39
OGDEN	UT	23	6	10	7	8	0	54
OHIO	OH	20	6	10	8	5	0	49
OKLAHOMA	OK	8	3	10	13	6	0	40
OKLAHOMA CITY	OK	14	3	10	11	3	0	41
OMAHA CONSORTIUM	NE	9	5	10	5	8	0	37
ONONDAGA COUNTY CONSORTIUM	NY	15	3	10	13	6	0	47
ONTARIO	CA	19	10	10	8	3	0	50
ORANGE	CA	0	2	10	1	0	0	13
ORANGE CITY CONSORTIUM	TX	0	0	10	0	0	0	10
ORANGE COUNTY	CA	24	2	10	6	6	0	48
ORANGE COUNTY	FL	17	1	10	14	7	0	49
ORANGE COUNTY CONSORTIUM	NC	24	6	10	6	10	0	56
ORANGE COUNTY CONSORTIUM	NY	23	8	10	8	10	0	59
OREGON	OR	7	7	10	15	4	0	43
ORLANDO	FL	18	5	10	14	10	0	57
OWENSBORO	KY	19	0	10	12	8	0	49

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
OXNARD	CA	23	0	10	7	10	0	50
PALM BEACH COUNTY CONSORTIUM	FL	10	8	10	2	10	0	40
PALMDALE	CA	0	0	10	0	0	0	10
PARAMOUNT CITY	CA	0	0	10	0	0	0	10
PARKERSBURG CONSORTIUM	WV	1	0	10	1	1	0	13
PASADENA	CA	0	2	10	10	1	0	23
PASADENA	TX	3	3	10	2	6	0	24
PASCO COUNTY	FL	4	15	10	5	2	0	36
PASSAIC	NJ	22	5	10	0	9	0	46
PATERSON	NJ	25	8	10	5	9	0	57
PAWTUCKET	RI	11	2	10	7	5	0	35
PEABODY CONSORTIUM	MA	24	13	10	7	10	0	64
PENNSYLVANIA	PA	11	2	10	11	2	0	36
PEORIA	IL	15	7	10	3	4	0	39
PERTH AMBOY	NJ	24	14	10	14	6	0	68
PHILADELPHIA	PA	19	10	10	6	2	0	47
PHOENIX	AZ	8	7	10	3	8	0	36
PIERCE COUNTY	WA	6	11	10	2	2	0	31
PINE BLUFF	AR	13	0	10	2	5	0	30
PINELLAS COUNTY CONSORTIUM	FL	23	5	10	14	3	0	55
PITTSBURGH	PA	22	11	10	8	3	0	54
PLANO	TX	4	0	10	3	6	0	23
POLK COUNTY	FL	5	15	10	10	5	0	45
POMONA	CA	4	1	10	11	4	0	30
POMPANO BEACH	FL	0	0	10	1	0	0	11
PONCE	PR	2	0	10	1	4	0	17
PONTIAC	MI	17	8	10	9	5	0	49
PORT ARTHUR	TX	4	0	10	7	2	0	23
PORT HURON	MI	23	0	10	15	7	0	55
PORTLAND	ME	20	8	10	10	5	0	53
PORTLAND CONSORTIUM	OR	16	14	10	13	8	0	61
PORTSMOUTH	VA	7	0	10	9	6	0	32
PRINCE GEORGE'S COUNTY	MD	20	9	10	5	9	0	53
PRINCE WILLIAM COUNTY	VA	3	0	10	1	2	0	16
PROVIDENCE	RI	15	3	10	11	8	0	47
PROVO CONSORTIUM	UT	21	0	10	6	9	0	46
PUEBLO CONSORTIUM	CO	24	5	10	7	6	0	52
PUERTO RICO	PR	20	10	10	1	5	0	46
QUINCY CONSORTIUM	MA	17	6	10	7	7	0	47
RACINE	WI	24	3	10	11	5	0	53
RALEIGH	NC	22	10	10	9	3	0	54
READING	PA	23	12	10	8	4	0	57
REDDING	CA	20	7	10	9	2	0	48
REDWOOD CITY	CA	11	0	10	7	1	0	29
RENO CONSORTIUM	NV	21	8	10	14	10	0	63
RHODE ISLAND	RI	16	10	10	13	6	0	55
RICHLAND CONSORTIUM	WA	9	0	10	6	4	0	29
RICHLAND COUNTY	SC	0	0	10	0	0	0	10
RICHMOND	CA	0	14	10	3	1	0	28
RICHMOND	VA	12	10	10	9	8	0	49
RIVERSIDE	CA	0	3	10	8	3	0	24
RIVERSIDE COUNTY	CA	14	6	10	13	8	0	51
ROANOKE	VA	11	5	10	10	3	0	39

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
ROCHESTER	NY	21	5	10	14	7	0	57
ROCKFORD	IL	9	13	10	8	4	0	44
ROCKLAND COUNTY	NY	15	15	10	3	1	0	44
ROCKY MOUNT CONSORTIUM	NC	4	13	10	10	2	0	39
ROSEMEAD	CA	0	6	10	5	0	0	21
SACRAMENTO	CA	10	13	10	9	7	0	49
SACRAMENTO COUNTY CONSORTIUM	CA	22	7	10	3	8	0	50
SAGINAW	MI	2	2	10	12	1	0	27
SALEM CONSORTIUM	OR	11	12	10	14	4	0	51
SALINAS	CA	24	13	10	8	10	0	65
SALT LAKE CITY	UT	21	14	10	5	7	0	57
SALT LAKE COUNTY CONSORTIUM	UT	11	10	10	13	10	0	54
SAN ANGELO	TX	7	14	10	12	2	0	45
SAN ANTONIO	TX	23	3	10	11	9	0	56
SAN BERNARDINO	CA	24	0	10	3	1	0	38
SAN BERNARDINO COUNTY CONSORTIUM	CA	5	6	10	6	6	0	33
SAN BUENAVENTURA	CA	0	0	10	0	0	0	10
SAN DIEGO	CA	6	8	10	7	7	0	38
SAN DIEGO COUNTY CONSORTIUM	CA	7	5	10	10	6	0	38
SAN FRANCISCO	CA	17	13	10	5	2	0	47
SAN JOAQUIN COUNTY	CA	4	9	10	5	8	0	36
SAN JOSE	CA	23	8	10	8	2	0	51
SAN JUAN	PR	15	5	10	5	4	0	39
SAN LUIS OBISPO COUNTY	CA	7	11	10	3	2	0	33
SAN MATEO	CA	24	15	10	15	3	0	67
SAN MATEO COUNTY CONSORTIUM	CA	16	10	10	12	8	0	56
SANTA ANA	CA	13	10	10	14	1	0	48
SANTA BARBARA	CA	0	5	10	5	4	0	24
SANTA BARBARA COUNTY CONSORTIUM	CA	4	9	10	9	9	0	41
SANTA CLARA	CA	2	15	10	8	9	0	44
SANTA CLARA COUNTY	CA	1	0	10	5	9	0	25
SANTA CRUZ	CA	25	15	10	5	1	0	56
SANTA MONICA	CA	3	9	10	9	2	0	33
SANTA ROSA	CA	14	2	10	7	9	0	42
SARASOTA CONSORTIUM	FL	8	0	10	15	2	0	35
SAVANNAH	GA	19	5	10	10	7	0	51
SCHENECTADY CONSORTIUM	NY	4	0	10	5	5	0	24
SCRANTON	PA	15	8	10	12	6	0	51
SEATTLE	WA	8	14	10	12	4	0	48
SEMINOLE COUNTY	FL	2	0	10	1	3	0	16
SHELBY COUNTY	TN	7	0	10	10	8	0	35
SHREVEPORT	LA	11	1	10	10	6	0	38
SIOUX CITY CONSORTIUM	IA	24	7	10	13	9	0	63
SIOUX FALLS	SD	21	10	10	8	8	0	57
SNOHOMISH COUNTY CONSORTIUM	WA	8	14	10	12	8	0	52
SOMERSET COUNTY CONSORTIUM	NJ	10	15	10	2	4	0	41
SOMERVILLE	MA	24	10	10	7	6	0	57
SONOMA COUNTY	CA	17	5	10	6	10	0	48
SOUTH BEND CONSORTIUM	IN	24	7	10	6	4	0	51
SOUTH CAROLINA	SC	23	3	10	9	5	0	50
SOUTH DAKOTA	SD	16	9	10	13	3	0	51
SOUTH GATE	CA	5	11	10	5	1	0	32
SPARTANBURG	SC	22	0	10	13	4	0	49

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
SPARTANBURG COUNTY	SC	6	0	10	0	1	0	17
SPOKANE	WA	21	14	10	14	8	0	67
SPOKANE COUNTY	WA	23	13	10	12	6	0	64
SPRINGFIELD	IL	7	6	10	10	2	0	35
SPRINGFIELD	MA	20	8	10	11	8	0	57
SPRINGFIELD	MO	14	2	10	15	1	0	42
SPRINGFIELD	OH	12	6	10	5	8	0	41
ST LOUIS COUNTY CONSORTIUM	MO	9	6	10	10	7	0	42
ST. CLAIR COUNTY CONSORTIUM	IL	12	0	10	5	8	0	35
ST. JOSEPH	MO	4	3	10	12	7	0	36
ST. LOUIS	MO	20	6	10	15	7	0	58
ST. LOUIS COUNTY CONSORTIUM	MN	20	10	10	9	8	0	57
ST. PAUL	MN	8	11	10	9	8	0	46
ST. PETERSBURG	FL	8	15	10	5	9	0	47
STAMFORD	CT	15	7	10	8	10	0	50
STARK COUNTY CONSORTIUM	OH	8	15	10	8	7	0	48
STATE COLLEGE	PA	6	11	10	15	4	0	46
STOCKTON	CA	11	1	10	2	3	0	27
SUFFOLK CONSORTIUM	VA	8	0	10	8	8	0	34
SUFFOLK COUNTY CONSORTIUM	NY	7	13	10	10	7	0	47
SUMMIT COUNTY	OH	3	1	10	7	5	0	26
SUMTER COUNTY CONSORTIUM	SC	17	1	10	10	0	0	38
SUNNYVALE	CA	12	13	10	3	10	0	48
SURRY COUNTY CONSORTIUM	NC	14	15	10	7	6	0	52
SYRACUSE	NY	15	7	10	12	2	0	46
TACOMA CONSORTIUM	WA	15	14	10	8	8	0	55
TALLAHASSEE	FL	13	1	10	6	9	0	39
TAMPA	FL	4	1	10	6	6	0	27
TARRANT COUNTY CONSORTIUM	TX	4	0	10	2	10	0	26
TAUNTON CONSORTIUM	MA	7	0	10	2	7	0	26
TENNESSEE	TN	7	9	10	11	3	0	40
TERRE HAUTE	IN	11	13	10	15	4	0	53
TEXAS	TX	6	7	10	12	4	0	39
THURSTON COUNTY CONSORTIUM	WA	3	0	10	0	1	0	14
TOA BAJA	PR	1	0	10	5	1	0	17
TOLEDO	OH	17	5	10	11	9	0	52
TOPEKA	KS	18	9	10	14	6	0	57
TRENTON	NJ	19	1	10	5	7	0	42
TRUJILLO ALTO	PR	0	0	10	0	0	0	10
TUCSON CONSORTIUM	AZ	9	7	10	10	8	0	44
TULSA	OK	1	0	10	1	1	0	13
TULSA COUNTY CONSORTIUM	OK	8	12	10	6	8	0	44
TURLOCK CONSORTIUM	CA	10	12	10	1	0	0	33
TUSCALOOSA	AL	1	0	10	1	2	0	14
TYLER	TX	5	0	10	3	8	0	26
UNION COUNTY CONSORTIUM	NJ	21	8	10	2	3	0	44
URBANA CONSORTIUM	IL	9	14	10	2	7	0	42
UTAH	UT	11	5	10	5	8	0	39
UTICA	NY	13	12	10	12	2	0	49
VALLEJO	CA	17	3	10	5	1	0	36
VENTURA COUNTY CONSORTIUM	CA	11	13	10	7	7	0	48
VERMONT	VT	18	12	10	15	4	0	59
VINELAND CONSORTIUM	NJ	12	0	10	9	9	0	40

***_Score for this factor may be reduced based on updates obtained from field offices**

Appendix 1
HOME Completion Summary Scoring Report

Participating Jurisdiction	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
VIRGINIA	VA	19	5	10	15	5	0	54
VIRGINIA BEACH	VA	9	8	10	13	2	0	42
VISALIA	CA	16	5	10	1	6	0	38
VOLUSIA COUNTY CONSORTIUM	FL	14	2	10	9	3	0	38
WACO	TX	10	15	10	9	7	0	51
WAKE COUNTY CONSORTIUM	NC	17	13	10	6	10	0	56
WARREN	MI	6	7	10	10	1	0	34
WARREN CONSORTIUM	OH	12	2	10	15	4	0	43
WASHINGTON	WA	5	11	10	15	5	0	46
WASHINGTON COUNTY	PA	18	2	10	12	1	0	43
WASHINGTON COUNTY CONSORTIUM	OR	7	5	10	5	9	0	36
WASHINGTON COUNTY CONSORTIUM	TX	5	0	10	8	4	0	27
WASHTENAW COUNTY	MI	23	13	10	5	7	0	58
WATERBURY	CT	13	12	10	9	1	0	45
WATERLOO CONSORTIUM	IA	21	5	10	13	7	0	56
WAUKESHA COUNTY CONSORTIUM	WI	10	2	10	1	10	0	33
WAYNE COUNTY CONSORTIUM	MI	8	15	10	2	9	0	44
WEST PALM BEACH	FL	3	15	10	1	9	0	38
WEST VIRGINIA	WV	8	12	10	11	1	0	42
WESTCHESTER COUNTY	NY	9	13	10	5	6	0	43
WESTLAND	MI	24	10	10	12	7	0	63
WESTMINSTER	CA	3	0	10	1	3	0	17
WESTMORELAND COUNTY CONSORTIUM	PA	12	1	10	7	2	0	32
WHEELING CONSORTIUM	WV	2	5	10	7	1	0	25
WHITTIER	CA	0	3	10	3	5	0	21
WICHITA	KS	15	11	10	9	8	0	53
WICHITA FALLS	TX	13	0	10	6	7	0	36
WILKES-BARRE	PA	8	0	10	1	2	0	21
WILL COUNTY	IL	14	15	10	10	8	0	57
WILLIAMSPORT	PA	4	0	10	15	8	0	37
WILMINGTON	DE	16	8	10	15	1	0	50
WILMINGTON	NC	9	15	10	12	5	0	51
WINSTON-SALEM CONSORTIUM	NC	24	11	10	10	8	0	63
WISCONSIN	WI	17	7	10	13	9	0	56
WOONSOCKET	RI	9	0	10	9	8	0	36
WORCESTER	MA	21	2	10	13	5	0	51
WYOMING	WY	11	12	10	6	5	0	44
YAKIMA	WA	12	10	10	5	6	0	43
YONKERS	NY	17	5	10	6	6	0	44
YORK	PA	23	8	10	12	3	0	56
YORK COUNTY	PA	25	2	10	14	5	0	56
YOUNGSTOWN	OH	16	13	10	14	3	0	56

***_Score for this factor may be reduced based on updates obtained from field offices**

APPENDIX 2

Standard Forms

1. HUD-424, Application for Federal Assistance signed by the authorized
2. HUD-2880, Applicant/Recipient Disclosure/Update Report
3. HUD-2993, Acknowledgment of Application Receipt

OMB Number: 4040-0004
Expiration Date: 01/31/2009

Application for Federal Assistance SF-424 Version 02

*1. Type of Submission:	*2. Type of Application	* If Revision, select appropriate letter(s)
☐ Preapplication	☐ New	
☐ Application	☐ Continuation	*Other (Specify)
☐ Changed/Corrected Application	☐ Revision	_____

3. Date Received: 4. Applicant Identifier:

5a. Federal Entity Identifier: *5b. Federal Award Identifier:

State Use Only:

6. Date Received by State: 7. State Application Identifier:

8. APPLICANT INFORMATION:

*a. Legal Name:

*b. Employer/Taxpayer Identification Number (EIN/TIN): *c. Organizational DUNS:

d. Address:

*Street 1: _____
Street 2: _____
*City: _____
County: _____
*State: _____
Province: _____
*Country: _____
*Zip / Postal Code _____

e. Organizational Unit:

Department Name: Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: _____ *First Name: _____
Middle Name: _____
*Last Name: _____
Suffix: _____

Title:

Organizational Affiliation:

*Telephone Number: Fax Number:

*Email:

OMB Number: 4040-0004
Expiration Date: 01/31/2009

Application for Federal Assistance SF-424 Version 02

***9. Type of Applicant 1: Select Applicant Type:**

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

*Other (Specify)

***10 Name of Federal Agency:**

11. Catalog of Federal Domestic Assistance Number:

_____

CFDA Title:

_____

***12 Funding Opportunity Number:**

_____

*Title:

_____

13. Competition Identification Number:

_____

Title:

_____

14. Areas Affected by Project (Cities, Counties, States, etc.):

***15. Descriptive Title of Applicant's Project:**

OMB Number: 4040-0004
Expiration Date: 01/31/2009

Application for Federal Assistance SF-424 Version 02

16. Congressional Districts Of:

*a. Applicant: *b. Program/Project:

17. Proposed Project:

*a. Start Date: *b. End Date:

18. Estimated Funding ($):

*a. Federal _____
*b. Applicant _____
*c. State _____
*d. Local _____
*e. Other _____
*f. Program Income _____
*g. TOTAL _____

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on _____

☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.

☐ c. Program is not covered by E. O. 12372

***20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

☐ Yes ☐ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U. S. Code, Title 218, Section 1001)

☐ ** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions

Authorized Representative:

Prefix: _____ *First Name: _____
Middle Name: _____
*Last Name: _____
Suffix: _____

*Title:

*Telephone Number: | Fax Number:

* Email:

*Signature of Authorized Representative: | *Date Signed:

Authorized for Local Reproduction

Standard Form 424 (Revised 10/2005)
Prescribed by OMB Circular A-102

OMB Number: 4040-0004
Expiration Date: 01/31/2009

Application for Federal Assistance SF-424 Version 02

***Applicant Federal Debt Delinquency Explanation**

The following should contain an explanation if the Applicant organization is delinquent of any Federal Debt.

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form (including the continuation sheet) required for use as a cover sheet for submission of preapplications and applications and related information under discretionary programs. Some of the items are required and some are optional at the discretion of the applicant or the Federal agency (agency). Required items are identified with an asterisk on the form and are specified in the instructions below. In addition to the instructions provided below, applicants must consult agency instructions to determine specific requirements.

Item	Entry:
1.	**Type of Submission:** (Required): Select one type of submission in accordance with agency instructions. • Preapplication • Application • Changed/Corrected Application – If requested by the agency, check if this submission is to change or correct a previously submitted application. Unless requested by the agency, applicants may not use this to submit changes after the closing date.
2.	**Type of Application:** (Required) Select one type of application in accordance with agency instructions. • New – An application that is being submitted to an agency for the first time. • Continuation - An extension for an additional funding/budget period for a project with a projected completion date. This can include renewals. • Revision - Any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision, enter the appropriate letter(s). More than one may be selected. If "Other" is selected, please specify in text box provided. A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration E. Other (specify)
3.	**Date Received:** Leave this field blank. This date will be assigned by the Federal agency.
4.	**Applicant Identifier:** Enter the entity identifier assigned by the Federal agency, if any, or applicant's control number, if applicable.
5a	**Federal Entity Identifier:** Enter the number assigned to your organization by the Federal Agency, if any.
5b.	**Federal Award Identifier:** For new applications leave blank. For a continuation or revision to an existing award, enter the previously assigned Federal award identifier number. If a changed/corrected application, enter the Federal Identifier in accordance with agency instructions.
6.	**Date Received by State:** Leave this field blank. This date will be assigned by the State, if applicable.
7.	**State Application Identifier:** Leave this field blank. This identifier will be assigned by the State, if applicable.
8.	**Applicant Information:** Enter the following in accordance with agency instructions: **a. Legal Name:** (Required): Enter the legal name of applicant that will undertake the assistance activity. This is the name that the organization has registered with the Central Contractor Registry. Information on registering with CCR may be obtained by visiting the Grants.gov website. **b. Employer/Taxpayer Number (EIN/TIN):** (Required): Enter the Employer or Taxpayer Identification Number (EIN or TIN) as assigned by the Internal Revenue Service. If your organization is not in the US, enter 44-4444444. **c. Organizational DUNS:** (Required) Enter the organization's DUNS or DUNS+4 number received from Dun and Bradstreet. Information on obtaining a DUNS number may be obtained by visiting the Grants.gov website. **d. Address:** Enter the complete address as follows: Street address (Line 1 required), City (Required), County, State (Required, if country is US), Province, Country (Required), Zip/Postal Code (Required, if country is US). **e. Organizational Unit:** Enter the name of the primary organizational unit (and department or division, if applicable) that will undertake the

Item	Entry:
10.	**Name Of Federal Agency:** (Required) Enter the name of the Federal agency from which assistance is being requested with this application.
11.	**Catalog Of Federal Domestic Assistance Number/Title:** Enter the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested, as found in the program announcement, if applicable.
12.	**Funding Opportunity Number/Title:** (Required) Enter the Funding Opportunity Number and title of the opportunity under which assistance is requested, as found in the program announcement.
13.	**Competition Identification Number/Title:** Enter the Competition Identification Number and title of the competition under which assistance is requested, if applicable.
14.	**Areas Affected By Project:** List the areas or entities using the categories (e.g., cities, counties, states, etc.) specified in agency instructions. Use the continuation sheet to enter additional areas, if needed.
15.	**Descriptive Title of Applicant's Project:** (Required) Enter a brief descriptive title of the project. If appropriate, attach a map showing project location (e.g., construction or real property projects). For preapplications, attach a summary description of the project.
16.	**Congressional Districts Of:** (Required) 16a. Enter the applicant's Congressional District, and 16b. Enter all District(s) affected by the program or project. Enter in the format: 2 characters State Abbreviation – 3 characters District Number, e.g., CA-005 for California 5th district, CA-012 for California 12th district, NC-103 for North Carolina's 103rd district. • If all congressional districts in a state are affected, enter "all" for the district number, e.g., MD-all for all congressional districts in Maryland. • If nationwide, i.e. all districts within all states are affected, enter US-all. • If the program/project is outside the US, enter 00-000.
17.	**Proposed Project Start and End Dates:** (Required) Enter the proposed start date and end date of the project.
18.	**Estimated Funding:** (Required) Enter the amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines, as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses.
19.	**Is Application Subject to Review by State Under Executive Order 12372 Process?** Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the

	assistance activity, if applicable. **f. Name and contact information of person to be contacted on matters involving this application**: Enter the name (First and last name required), organizational affiliation (if affiliated with an organization other than the applicant organization), telephone number (Required), fax number, and email address (Required) of the person to contact on matters related to this application.		State intergovernmental review process. Select the appropriate box. If "a." is selected, enter the date the application was submitted to the State
		20.	**Is the Applicant Delinquent on any Federal Debt?** (Required) Select the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. If yes, include an explanation on the continuation sheet.
9.	Type of Applicant: (Required) Select up to three applicant type(s) in accordance with agency instructions. A. State Government B. County Government C. City or Township Government D. Special District Government E. Regional Organization F. U.S. Territory or Possession G. Independent School District H. Public/State Controlled Institution of Higher Education I. Indian/Native American Tribal Government (Federally Recognized) J. Indian/Native American Tribal Government (Other than Federally Recognized) K. Indian/Native American Tribally Designated Organization L. Public/Indian Housing Authority M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education) N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education) O. Private Institution of Higher Education P. Individual Q. For-Profit Organization (Other than Small Business) R. Small Business S. Hispanic-serving Institution T. Historically Black Colleges and Universities (HBCUs) U. Tribally Controlled Colleges and Universities (TCCUs) V. Alaska Native and Native Hawaiian Serving Institutions W. Non-domestic (non-US) Entity X. Other (specify)	21.	**Authorized Representative**: (Required) To be signed and dated by the authorized representative of the applicant organization. Enter the name (First and last name required) title (Required), telephone number (Required), fax number, and email address (Required) of the person authorized to sign for the applicant. A copy of the governing body's authorization for you to sign this application as the official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 8/31/2009)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).

☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9

☐ **Yes** ☐ **No.**

If you answered **"No"** to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature: X	Date: (mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;

(2) You are updating a prior report as discussed below; or

(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance): General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form HUD-2993 (2/99)

APPENDIX 3

Recommended Energy Efficient and Environmentally-Friendly Green Elements

HUD strongly recommends that your proposed project(s) incorporate the following additional energy efficient and environmentally-friendly Green elements into the design. However, the inclusion or exclusion of these elements will not be considered in rating your application and will not affect your ranking in relation to other applicants.

Renewable Energy

1. *Passive Solar.* Orient the building to make the greatest use of passive solar heating and cooling.

2. *Photovoltaic-ready.* Site, design, engineer and wire the development to accommodate installation of photovoltaic panels in the future.

Sustainable Site Design

1. *Transportation Choices.* Locate projects within a one-quarter mile of at least two, or one-half mile of at least four community and retail facilities.

2. *Connections to Surrounding Neighborhoods.* Provide three separate connections from the development to sidewalks or pathways in surrounding neighborhoods.

3. *Protecting Environmental Resources.* Do not locate the project within 100 feet of wetlands; 1,000 feet of a critical habitat; or on steep slopes, prime farmland or park land.

4. *Erosion and Sediment Control.* Implement EPA's Best Management Practices for erosion and sedimentation control during construction.

5. *Sustainable Landscaping.* Select native trees and plants that are appropriate to the site's soils and microclimate.

6. *Energy Efficient Landscaping.* Locate trees and plants to provide shading in the summer and allow for heat gain in the winter.

Water Conservation

1. *Efficient Irrigation.* Install low volume, non-spray irrigation system (such as drip irrigation, bubblers, or soaker hose).

Energy Efficient Materials

1. *Durable Materials.* Use materials that last longer than conventional counterparts such as stone, brick or concrete.

2. *Resource Efficient Materials.* Use layouts and advanced building techniques that reduce the amount of homebuilding material required.

3. *Heat Absorbing Materials.* Use materials that retain solar heat in winter and remain cool in summer.

4. *Solar-reflective Paving.* Use light-colored/high-albedo materials and/or open-grid pavement with a minimum Solar Reflective index of 0.6 over at least 30 percent of the site's hardscaped areas.

5. *Local Source Materials.* Use materials from local sources that are close to the job site.

6. *Green Roofing.* Use Energy Star-compliant and high-emissive roofing, and/or install a Green (vegetated) roof for at least 50 percent of the roof area; or a combination of high-albedo and vegetated roof covering 75 percent of the roof area.

Healthy Homes

1. *Green Label Certified Floor Covering.* Do not install carpets in basements, entryways, laundry rooms, bathrooms or kitchens; if using carpet, use the Carpet and Rug Institute's Green Label certified carpet and pad.

2. *Healthy Flooring Materials: Alternatives.* Use non-vinyl, non-carpet floor coverings in all rooms.

3. *Healthy Flooring Materials: Reducing Dust.* Install a whole-house vacuum system with high-efficiency particulate air filtration.

4. *Sealing Joints.* Seal all wall, floor and joint penetrations to prevent pest entry; provide rodent and corrosion proof screens (e.g., copper or stainless steel mesh) for large openings.

5. *Termite-resistant Materials.* Use termite-resistant materials in areas known to be infested.

6. *Tub and shower Enclosures: Moisture Prevention.* Use one-piece fiberglass or similar enclosure or, if using any form of grouted material, use backing materials such as cement board, fiber cement board, fiber-glass reinforced board or cement plaster.

7. *Green Maintenance Guide.* Provide a guide for homeowners and renters that explains the intent, benefits, use and maintenance of Green building features, and encourages additional Green activities such as recycling, gardening and use of healthy cleaning materials.

8. *Resident Orientation.* Provide a walk-through and orientation to the homeowner or new tenants.

[FR Doc. E8–11054 Filed 5–15–08; 8:45 am]
BILLING CODE 4210–67–C

Reader Aids

Federal Register

Vol. 73, No. 96

Friday, May 16, 2008

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

23939–24138 1
24139–24496 2
24497–24850 5
24851–25502 6
25503–25960 7
25961–26312 8
26313–26940 9
26941–27458 12
27459–27712 13
27713–28024 14
28025–28318 15
28319–28698 16

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1200 24139

3 CFR

Proclamations:
8247 24133
8248 24135
8249 24137
8250 25501
8251 25503
8252 26311
8253 27457
8254 27713
8255 27715

Executive Orders:
13338 (See Notice of May 7, 2008) 26939
13399 (See Notice of May 7, 2008) 26939
13460 (See Notice of May 7, 2008) 26939

Administrative Orders:
Memorandums:
Memorandum of May 6, 2008 27717
Notices:
Notice of May 7, 2008 26939
13464 24491
Presidential Determinations:
No. 2008-19 of May 5, 2008 27719

5 CFR

250 24851
733 28025
2429 27459

6 CFR

Proposed Rules:
5 .....28060, 28062, 28066

7 CFR

56 28026
59 28606
70 28026
305 24851
318 24851
319 25505
915 26941
932 26313
944 26941
1005 26315
1007 26315
1221 25398
2902 .....27928, 27958, 27978

Proposed Rules:
319 .....24886, 28372, 28377

8 CFR

103 28026
299 28026

Proposed Rules:
214 26340
248 26340

9 CFR

Proposed Rules:
2 26344
93 28382

10 CFR

Proposed Rules:
34 27771
35 27773
50 26349
600 28385
1024 28385

12 CFR

201 25505
229 28319

Proposed Rules:
261a 25594
712 23982
741 23982

14 CFR

21 24497
39 .....23939, 23942, 24141, 24143, 24145, 24147, 24149, 24151, 24153, 24155, 24157, 24160, 24162, 24164, 24168, 24856, 24858, 24864, 25961, 25962, 25967, 25970, 25974, 25977, 25984, 25986, 25990, 25997, 26316, 26318, 26475
60 26478
71 .....25506, 25999, 27721, 28032, 28320
95 23944
97 .....24171, 27721, 27725
121 25506
382 27614
1210 28033

Proposed Rules:
39 .....23988, 23990, 23993, 23995, 24887, 25597, 25599, 25601, 25606, 25609, 25612, 26043, 26045, 26351, 27475, 27477, 27479
71 .....26047, 26048, 27481
91 26049
125 26049
135 26049

15 CFR

774 26000

16 CFR

Proposed Rules:
317 25614

17 CFR

Proposed Rules:
230 26876
232 26876
239 26876
240 26876
249 26876

18 CFR

35 25832
381 23946

20 CFR

401 25507
402 25507
403 26001
416 28033

21 CFR

101 23947
111 27727
522 28036
529 25507

24 CFR

Proposed Rules
3500 26953

26 CFR

1 ....26321, 26322, 27728, 27729
301 ....27728, 27729

Proposed Rules:
1 24186
301 27775

27 CFR

Proposed Rules:
19 26200

29 CFR

4022 28037
4044 28037

Proposed Rules:
403 27346

30 CFR

75 27729
926 27730

Proposed Rules:
732 24120
785 24120
870 24120
872 24120

32 CFR

204 23953
706 24173

Proposed Rules:
199 24509

33 CFR

100 ....25508, 26002, 26005, 26007, 27460, 28038
101 25562
102 25562
104 25562
105 25562
106 25562
117 ....24866, 27744
155 24497
156 24497
165 ....26017, 26019, 27460, 27745, 28039, 28321

Proposed Rules:
110 ....26054, 27775
117 ....24510, 28069
160 27778
165 ....24513, 24889, 24899, 24901, 24904, 25624

34 CFR

8 27747

Proposed Rules:
5b 26056
300 27690

37 CFR

Proposed Rules:
201 25627

38 CFR

3 24868
17 26945
38 27462

39 CFR

111 ....25508, 25509, 28041

Proposed Rules:
111 26353

40 CFR

9 25098
51 ....24174, 28321
52 ....23957, 23959, 24174, 24175, 24500, 24868, 25516, 26019, 28321
60 24870
61 24870
62 24870
63 24870
70 24174
71 24174
80 26325
85 25098
86 25098
89 25098
92 25098
94 25098
180 ....25518, 25524, 25528, 25533, 27748, 27756
268 27761
300 26025
1033 25098
1039 25098
1042 25098
1065 25098
1068 25098

Proposed Rules:
52 ....23998, 24187, 24515, 26059, 26355, 27783, 27786, 27788, 27791, 28071
180 28391
704 24187
720 24187
721 24187
723 24187

41 CFR

51-3 28043
51-4 28043
302-17 25539

42 CFR

412 ....24871, 26788

Proposed Rules:
413 25918
418 24000
422 28556
423 28556

44 CFR

64 24178
65 ....26026, 28044, 28046
67 ....25542, 25560, 26030, 28350
153 28357

Proposed Rules:
67 ....24036, 25633, 26060, 28073, 28394

45 CFR

Proposed Rules:
1606 27483
1623 27483

46 CFR

10 25562
12 25562
15 25562

47 CFR

0 25566
1 25420
2 25420
20 25566
24 24180
25 ....25420, 25591
27 ....24180, 26032
64 ....28049, 28057
68 25566
73 ....25420, 28361
74 25420
76 24502
90 25420
97 25420

Proposed Rules:
27 26067
73 28400
76 24515

48 CFR

204 27464
215 27464
231 27464
252 27464
3002 25592
3036 24881
6101 26947
6102 26947
6103 26947
6104 26947
6105 26947
9904 23961

Proposed Rules:
3 28407
9 28407
12 28407
52 28407

49 CFR

29 24139
565 28370
1572 25562

Proposed Rules:
18 24188
19 24188
107 24519
192 26953
512 26071
523 24352
531 ....24190, 24352
533 ....24190, 24352
534 24352
536 24352
537 24352
544 24906

50 CFR

17 ....23966, 28212, 28306
660 25592
229 23970
622 ....24883, 24884
648 24885
660 ....23971, 26325
679 ....24184, 23339, 27473, 27768

Proposed Rules:
17 ....24910, 24911, 24915, 25354, 27483, 27900, 28080, 28084, 28094, 28410
80 24523
600 24922
635 24922
648 24936
700 27998

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 16, 2008

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Stationary Source Permits; published 4-16-08

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

Assistance Program Under the 9/11 Heroes Stamp Act (2001); published 5-16-08

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Vehicle Identification Number Requirements; Correction; published 5-16-08

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Changes in Handling Requirements for Fresh Nectarines and Peaches Grown in California; comments due by 5-19-08; published 3-18-08 [FR E8-05357]

Pears Grown in Oregon and Washington; Tomatoes Grown in Florida; and Walnuts Grown in California; comments due by 5-19-08; published 3-18-08 [FR E8-05360]

Raisins Produced From Grapes Grown in California:

Revisions to Requirements Regarding Off-Grade Raisins; comments due by 5-22-08; published 4-22-08 [FR E8-08639]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Weighing, Feed, and Swine Contractors; comments due by 5-21-08; published 4-21-08 [FR E8-08554]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Exclusive Economic Zone Off Alaska:

Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; comments due by 5-20-08; published 3-21-08 [FR E8-05789]

Bering Sea and Aleutian Islands King and Tanner Crabs; comments due by 5-19-08; published 3-19-08 [FR E8-05562]

Fisheries of the Northeastern United States:

Atlantic Mackerel, Squid, and Butterfish Fisheries; comments due by 5-19-08; published 4-4-08 [FR E8-07025]

Fisheries Off West Coast States; Inseason Adjustments; comments due by 5-19-08; published 4-18-08 [FR E8-08405]

General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits; comments due by 5-23-08; published 5-8-08 [FR E8-10176]

Magnuson-Stevens Fishery Conservation and Management Act Provisions:

Fisheries of the Northeastern United States; Northeast Multispecies Fishery, etc.; comments due by 5-21-08; published 5-6-08 [FR E8-09970]

Pacific Whiting Fishery Vessel License Limitation Program; Pacific Coast Groundfish Fishery Management Plan Amendment; comments due by 5-19-08; published 3-19-08 [FR E8-05561]

CONSUMER PRODUCT SAFETY COMMISSION

Standard for the Flammability of Residential Upholstered Furniture; comments due by 5-19-08; published 3-4-08 [FR 08-00768]

DEFENSE DEPARTMENT

Engineers Corps

United States Navy Restricted Area, Menominee River, Marinette Marine Corp. Shipyard, Marinette, WI; comments due by 5-21-08; published 4-21-08 [FR E8-08525]

ENVIRONMENTAL PROTECTION AGENCY

Approval and Promulgation of Air Quality Implementation Plans:

Virginia; Incorporation of On-board Diagnostic Testing and Other Amendments to the Motor Vehicle, etc.; comments due by 5-22-08; published 4-22-08 [FR E8-08394]

Certain New Chemicals; Receipt and Status Information; comments due by 5-23-08; published 4-23-08 [FR E8-08794]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Pesticide Tolerance:

Prothioconazole; comments due by 5-19-08; published 3-19-08 [FR E8-05290]

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; Basin, WY; comments due by 5-19-08; published 4-14-08 [FR E8-07883]

FEDERAL DEPOSIT INSURANCE CORPORATION

Assessment Dividends; comments due by 5-23-08; published 3-24-08 [FR E8-05670]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Agency Information Collection Activities; Proposals, Submissions, and Approvals; comments due by 5-19-08; published 4-18-08 [FR E8-08459]

HEALTH AND HUMAN SERVICES DEPARTMENT

Regulation on the Organizational Integrity of Entities Implementing Leadership Act Programs and Activities; comments due by 5-19-08; published 4-17-08 [FR 08-01147]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Safety Zone:

Ocean City Air Show, Atlantic Ocean, Ocean City, MD; comments due by 5-21-08; published 4-21-08 [FR E8-08469]

Red Bull Air Race, Detroit River, Detroit, MI; comments due by 5-22-08; published 5-7-08 [FR E8-10238]

Safety Zone; Festival of Sail 2008 Ship's Parade:

San Diego Harbor, San Diego, California; comments due by 5-23-08; published 4-23-08 [FR E8-08732]

Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY; comments due by 5-21-08; published 5-6-08 [FR E8-10005]

Security Zone; Patapsco River, Middle Branch, Baltimore, MD; comments due by 5-23-08; published 4-23-08 [FR E8-08728]

HOMELAND SECURITY DEPARTMENT

Federal Emergency Management Agency

Proposed Flood Elevation Determinations; comments due by 5-22-08; published 2-22-08 [FR E8-03362]

HOMELAND SECURITY DEPARTMENT

U.S. Citizenship and Immigration Services

Petitions Filed on Behalf of Temporary Workers Subject to or Exempt From Annual Numerical Limitation; comments due by 5-23-08; published 3-24-08 [FR E8-05906]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants:

Coaster Brook Trout; comments due by 5-19-08; published 3-20-08 [FR E8-05618]

INTERIOR DEPARTMENT

Privacy Act; Systems of Records; comments due by 5-19-08; published 4-8-08 [FR E8-07273]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

North Dakota Regulatory Program; comments due by 5-19-08; published 4-18-08 [FR E8-08408]

JUSTICE DEPARTMENT

DNA-Sample Collection Under the DNA Fingerprint Act (of 2005) and the Adam Walsh Child Protection and Safety Act (of 2006); comments due by 5-19-08; published 4-18-08 [FR E8-08339]

SECURITIES AND EXCHANGE COMMISSION

Exchange-Traded Funds; comments due by 5-19-08; published 3-18-08 [FR E8-05239]

Naked Short Selling Anti-Fraud Rule; comments due by 5-20-08; published 3-21-08 [FR E8-05697]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness Directives:

APEX Aircraft Model CAP 10 B Airplanes; comments due by 5-23-08; published 4-23-08 [FR E8-08752]

Bell Helicopter Textron Canada Model 230 Helicopters; comments due by 5-23-08; published 4-23-08 [FR E8-08755]

Boeing Model 737 300, 400, and 500 Series Airplanes; comments due by 5-23-08; published 3-24-08 [FR E8-05702]

Boeing Model 747 Airplanes and Model 767 Airplanes Equipped with General Electric CF6-80C2 and CF6-80A Series Engines; comments due by 5-22-08; published 4-7-08 [FR E8-07153]

Bombardier Model DHC 8 102, DHC-8-103, DHC 8 106, etc.; comments due by 5-21-08; published 5-1-08 [FR E8-09575]

Bombardier Model DHC 8 400 Series Airplanes; comments due by 5-21-08; published 5-1-08 [FR E8-09577]

Eurocopter France Model AS332 C, L, L1 and L2 Helicopters; comments due by 5-22-08; published 4-22-08 [FR E8-08641]

General Electric Co. Aircraft Engines CT7-8A Turboshaft Engines; comments due by 5-19-08; published 3-19-08 [FR E8-05492]

Lindstrand Balloons Ltd. Models 42A, 56A, 60A, 69A77A, 90A, 105A, 120A, 150A, 180A, 210A, 240A, 260A, and 310A Balloons; comments due by 5-19-08; published 4-18-08 [FR E8-08361]

McDonnell Douglas; comments due by 5-22-08; published 4-7-08 [FR E8-07151]

McDonnell Douglas Model 717-200 Airplanes; comments due by 5-22-08; published 4-7-08 [FR E8-07183]

Viking Air Limited Models DHC-2 Mk. I, DHC-2 Mk. II, and DHC-3 Airplanes; comments due by 5-19-08; published 4-18-08 [FR E8-08365]

Airworthiness Standards:

Fire Protection; comments due by 5-21-08; published 2-21-08 [FR E8-03271]

Class E Airspace; Amendment:

Black River Falls, WI; comments due by 5-19-08; published 4-2-08 [FR E8-06580]

Indianapolis, IN; comments due by 5-19-08; published 4-2-08 [FR E8-06572]

Class E Airspace; Establishment and Removal:

Roanoke Rapids, NC; comments due by 5-23-08; published 4-8-08 [FR E8-07092]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2929/P.L. 110–230

To temporarily extend the programs under the Higher Education Act of 1965. (May 13, 2008; 122 Stat. 877)

Last List May 9, 2008

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.