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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0157; Directorate Identifier 2001–NE–23–AD; Amendment 39–15469; AD 2008–08–16]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Makila 1A and 1A1 Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Turbomeca Makila 1A, 1A1, and 1A2 turboshaft engines. That AD currently requires replacing certain digital electronic control units (DECUs) and electronic control units (ECUs) with modified DECUs and ECUs. This AD applies only to Makila 1A and 1A1 turboshaft engines, and requires replacing the selector-comparator board in the ECU with a board incorporating Turbomeca modification TU 250. This AD results from recent unexplained reversions of the ECU to the 65% N1 back-up mode. We are issuing this AD to prevent dual-engine continued operation at 65% N1 after reversion of the ECU to the 65% N1 back-up mode due to temporary loss of N2 speed signal, which could lead to inability to continue safe flight, emergency autorotation landing, or an accident.

DATES: This AD becomes effective May 21, 2008.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

You can get the service information identified in this AD from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00; fax (33) 05 59 74 45 15.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2002–15–05, Amendment 39–12833 (67 FR 49859, August 1, 2002), with a proposed AD. The proposed AD applies to Turbomeca Makila 1A and 1A1 turboshaft engines. We published the proposed AD in the **Federal Register** on November 15, 2007 (72 FR 64172). That action proposed to require replacing the selector-comparator board in the ECU with a board incorporating Turbomeca modification TU 250.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public. We also found we needed to clarify the unsafe condition statement from "We are issuing this AD to prevent dual-engine reversion of the ECU to the 65% N1 back-up mode, which could lead to inability to continue safe flight, emergency autorotation landing, or an accident" to "We are issuing this AD to prevent dual-engine continued operation at 65% N1 after reversion of the ECU to the 65% N1 back-up mode due to temporary loss of N2 speed signal, which could lead to inability to continue safe flight, emergency autorotation landing, or an accident".

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously.

Makila 1A2 Turboshaft Engines Excluded From This AD

Although Makila 1A2 turboshaft engines, which were also listed in the previous AD, might be affected by this unsafe condition, EASA is reviewing the need to mandate a corrective action. Depending on the review outcome, we might address those engines in another AD action.

Costs of Compliance

We estimate that this AD will affect 10 Makila 1A and 1A1 turboshaft engines installed on helicopters of U.S. registry. We also estimate that it will take about 1 work-hour per engine to perform the actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $3,500 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $35,800.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12833 (67 FR 49859, August 1, 2002), and by adding a new airworthiness directive, Amendment 39–15469, to read as follows:

2008–08–16 Turbomeca: Amendment 39–15469. Docket No. FAA–2007–0157; Directorate Identifier 2001–NE–23–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 21, 2008.

Affected ADs

(b) This AD supersedes AD 2002–15–05, Amendment 39–12833.

Applicability

(c) This AD applies to Turbomeca Makila 1A and 1A1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter France model AS 332C, AS 332L, and AS 332L1 helicopters.

Unsafe Condition

(d) This AD results from recent unexplained reversions of the electronic control unit (ECU) to the 65% N1 back-up mode. The actions specified in this AD are intended to prevent dual-engine continued operation at 65% N1 after reversion of the ECU to the 65% N1 back-up mode due to temporary loss of N2 speed signal, which could lead to inability to continue safe flight, emergency autorotation landing, or an accident.

Compliance

(e) You are responsible for having the actions required by this AD performed before June 30, 2008, unless the actions have already been done.

(f) Replace the selector-comparator board in the ECU with a board incorporating Turbomeca Modification TU 250. Information on Modification TU 250 can be found in Turbomeca Mandatory Service Bulletin No. 298 73 0250, dated March 23, 2007.

Alternative Methods of Compliance

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

Related Information

(h) European Aviation Safety Agency AD 2007–0144, dated May 18, 2007, also addresses the subject of this AD.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on April 8, 2008.

Peter A. White,

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

[FR Doc. E8–8083 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0003; Airspace Docket No. 08–ASW–1]

Amendment of Class E Airspace; Lexington, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date, correction.

SUMMARY: This action confirms the effective date and makes a correction to the direct final rule that establishes Class E airspace at Muldrow Army Heliport, Lexington, OK, published in the **Federal Register** February 15, 2008 (73 FR 8795) Docket No. FAA–2008–0003. In the airspace description of the rule, the geographic coordinates were incorrect, and reference to Notice to Airmen and Airport/Facility Directory should be removed. This action corrects those errors.

DATES: *Effective Dates:* 0901 UTC April 10, 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: Gary Mallett, Central Service Center, System Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

The FAA published a direct final rule with request for comments in the **Federal Register** February 15, 2008, (73 FR 8795), Docket No. FAA–2008–0003. Subsequent to publication, the FAA found that the geographic coordinates for the Heliport were incorrect, and the sentence referencing the Notice to Airmen and Airport/Facility Directory should not have been included in the airspace description of this action.

The FAA uses the direct final rule procedure for non-controversial rules where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit an adverse comment, was received within the comment period, the regulation would become effective on April 10, 2008. No adverse comments were received; thus, this notice confirms that the direct final rule will become effective on this date.

Correction

■ In the **Federal Register** dated February 15, 2008, in **Federal Register** Docket No. FAA–2008–0003, on page 8796, column 2, line 31, correct to read:

(Lat. 35°01′00″ N., long. 97°14′01″ W.

■ On page 8796, column 2, line 39, remove the following:

"This Class E5 airspace is effective during specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

* * * * *

Issued in Fort Worth, TX on April 8, 2008.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. 08–1131 Filed 4–10–08; 4:30 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0023; Airspace Docket No. 08–AGL–1]

Establishment of Class E Airspace; Long Prairie, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date, correction.

SUMMARY: This action confirms the effective date and makes a correction to the direct final rule that establishes Class E airspace at Todd Field, Long Prairie, MN, published in the **Federal Register** February 4, 2008 (73 FR 6425) Docket No. FAA–2008–0023. In the airspace description of that rule, the reference to Notice to Airmen and Airport/Facility Directory should be removed. This action corrects that error.

DATES: *Effective Dates:* 0901 UTC April 10, 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: Gary Mallett, Central Service Center, System Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone (817) 222–4949.

SUPPLEMENTARY INFORMATION:

History

The FAA published a direct final rule with request for comments in the **Federal Register** February 4, 2008, (73 FR 6425), Docket No. FAA–2008–0023. The sentence referencing Notice to Airmen and Airport/Facility Directory in the airport description should not have been included in this action.

The FAA uses the direct final rule procedure for non-controversial rules where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit an adverse comment, was received within the comment period, the regulation would become effective on April 10, 2008. No adverse comments were received; thus, this notice confirms that the direct final rule will become effective on this date.

Correction

■ In the **Federal Register** dated February 4, 2008, in **Federal Register** Docket No. FAA–2008–0023, on page 6426, column 3, line 15, remove the following:

"This Class E5 airspace is effective during specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory."

* * * * *

Issued in Fort Worth, TX on April 8, 2008.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Center.

[FR Doc. 08–1130 Filed 4–10–08; 4:30 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30602; Amdt. No. 3264]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 16, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 16, 2008.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums, and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 4, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 5 JUN 2008*

Eek, AK, Eek, RNAV (GPS) RWY 17, Orig
Eek, AK, Eek, RNAV (GPS) RWY 35, Orig
Eek, AK, Eek, Takeoff Minimums and Obstacle DP, Orig
Homer, AK, Homer, NDB–A, Orig-A, CANCELLED
Wilmington, DE, New Castle, MLS RWY 9, Orig-B, CANCELLED
Punta Gorda, FL, Charlotte County, RNAV (GPS) RWY 4, Orig
Punta Gorda, FL, Charlotte County, RNAV (GPS) RWY 15, Orig
Punta Gorda, FL, Charlotte County, RNAV (GPS) RWY 22, Orig
Punta Gorda, FL, Charlotte County, RNAV (GPS) RWY 33, Orig
Punta Gorda, FL, Charlotte County, VOR RWY 4, Amdt 1
Punta Gorda, FL, Charlotte County, VOR RWY 22, Amdt 4
Punta Gorda, FL, Charlotte County, GPS RWY 3, Orig-A, CANCELLED
Punta Gorda, FL, Charlotte County, GPS RWY 15, Orig, CANCELLED
Punta Gorda, FL, Charlotte County, GPS RWY 21, Orig, CANCELLED
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Burlington, IA, Southeast Iowa Rgnl, ILS OR LOC RWY 36, Amdt 10
Dubuque, IA, Dubuque Rgnl, VOR RWY 31, Amdt 12
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Nantucket, MA, Nantucket Memorial, ILS OR LOC RWY 6, Orig-A
Adrian, MI, Lenawee County, RNAV (GPS) RWY 5, Amdt 1
Long Prairie, MN, Todd Field, RNAV (GPS) RWY 34, Orig
Long Prairie, MN, Todd Field, Takeoff Minimums and Obstacle DP, Orig
Lebanon, NH, Lebanon Muni, ILS OR LOC RWY 18, Amdt 5A
Monticello, NY, Sullivan County Intl, VOR/DME OR GPS RWY 1, Amdt 3, CANCELLED
Monticello, NY, Sullivan County Intl, Takeoff Minimums and Obstacle DP, Amdt 2, CANCELLED
Shirley, NY, Brookhaven, VOR RWY 6, Amdt 4
Shirley, NY, Brookhaven, RNAV (GPS) RWY 6, Amdt 1
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 18L, Amdt 1
Tulsa, OK, Tulsa Intl, RNAV (GPS) RWY 26, Amdt 1
Burlington/Mount Vernon, WA, Skagit Rgnl, RNAV (GPS) RWY 10, Amdt 1
Burlington/Mount Vernon, WA, Skagit Rgnl, NDB RWY 10, Amdt 4
Burlington/Mount Vernon, WA, Skagit Rgnl, GPS RWY 28, Orig-A, CANCELLED

[FR Doc. E8–8049 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30603; Amdt. No. 3265]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain

airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 16, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 16, 2008.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or

4. The National Archives and Records Administration (NARA). For Information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC/P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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 DOT Regulatory 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 4, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
03/21/08	IN	FORT WAYNE	SMITH FIELD	8/9217	GPS RWY 13, ORIG.
03/21/08	IN	RENSSELAER	JASPER COUNTY	8/9218	GPS RWY 18, ORIG.
03/21/08	IN	FORT WAYNE	SMITH FIELD	8/9219	VOR RWY 13, AMDT 9.
03/21/08	IA	CENTERVILLE	CENTERVILLE MUNI	8/9279	NDB OR GPS RWY 34, AMDT 1A.
03/21/08	IA	CENTERVILLE	CENTERVILLE MUNI	8/9280	NDB OR GPS RWY 16, AMDT 1A.
03/21/08	OH	COLUMBUS	PORT COLUMBUS INTL	8/9287	ILS OR LOC RWY 28L, AMDT 28.
03/21/08	OH	COLUMBUS	PORT COLUMBUS INTL	8/9288	ILS OR LOC RWY 10L, AMDT 18.
03/27/08	IN	GREENCASTLE	PUTNAM COUNTY	8/0033	RNAV (GPS) RWY 36, AMDT 1.
03/28/08	AR	MORRILTON	MORRILTON MUNI	8/0183	TAKE-OFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES, ORIG.
03/31/08	NY	OGDENSBURG	OGDENSBURG INTL	8/0386	RNAV (GPS) RWY 27, ORIG.
03/31/08	VA	NORFOLK	NORFOLK INTL	8/0400	ILS RWY 5, AMDT 24E.
03/31/08	WI	PRAIRIE DU SAC	SAUK–PRAIRIE	8/0408	RNAV (GPS) RWY 18, ORIG.
04/01/08	MS	CLEVELAND	CLEVELAND MUNI	8/0514	GPS RWY 35, ORIG.
04/01/08	GA	BAXLEY	BAXLEY MUNI	8/0516	NDB RWY 8, AMDT 1.
04/01/08	NC	ROANOKE RAPIDS	HALIFAX COUNTY	8/0518	NDB OR GPS RWY 5, AMDT 3B.
04/01/08	CT	WINDSOR LOCKS	BRADLEY INTL	8/0520	ILS RWY 24, AMDT 10A.
04/01/08	MS	MARKS	SELFS	8/0593	RNAV (GPS) RWY 2, ORIG.
04/01/08	MS	MARKS	SELFS	8/0594	RNAV (GPS) RWY 20, ORIG.
04/01/08	ID	GRANGEVILLE	IDAHO COUNTY	8/0630	GPS RWY 25, ORIG.
04/01/08	ID	GRANGEVILLE	IDAHO COUNTY	8/0631	GPS RWY 7, ORIG.
04/01/08	SC	WALTERBORO	LOWCOUNTRY REGIONAL	8/0637	GPS RWY 35, ORIG.
04/01/08	SC	WALTERBORO	LOWCOUNTRY REGIONAL	8/0638	GPS RWY 17, ORIG.
04/01/08	SC	WALTERBORO	LOWCOUNTRY REGIONAL	8/0641	GPS RWY 5, ORIG–A.
04/02/08	CA	DELANO	DELANO MUNI	8/0805	TAKE-OFF MINIMUMS AND (OBSTACLE) DEPARTURE PROCEDURES, AMDT 3.
04/02/08	CA	MARYSVILLE	YUBA COUNTY	8/0807	ILS OR LOC RWY 14, AMDT 5.
04/02/08	WY	JACKSON	JACKSON HOLE	8/0808	RNAV (RNP) Z RWY 1, ORIG.
04/02/08	UT	LOGAN	LOGAN-CACHE	8/0809	ILS OR LOC/DME RWY 17, ORIG.
04/02/08	CA	SAN FRANCISCO	SAN FRANCISCO INTL	8/0810	RNAV (GPS) Z RWY 28R, AMDT 2A.

[FR Doc. E8–8048 Filed 4–15–08; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM59

Elimination of Co-Payment for Weight Management Counseling

AGENCY: Department of Veterans Affairs.

ACTION: Direct final rule.

SUMMARY: The Department of Veterans Affairs (VA) is taking direct action to amend its medical regulations concerning co-payments for inpatient hospital care and outpatient medical care. More specifically, this rule designates weight management counseling (individual and group sessions) as a service that is not subject to co-payment requirements. The intended effect of this direct final rule is to increase participation in weight management counseling by removing the co-payment barrier. This direct final rule also amends the medical regulations by making nonsubstantive changes to correct references to statutory provisions.

DATES: This rule is effective on June 16, 2008, without further notice, unless VA receives relevant adverse comments by May 16, 2008.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AM59—Elimination of Co-payment for Weight Management Counseling." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (this is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy, Chief Business Office (16), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0384 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document amends VA's "Medical" regulations, which are set forth at 38 CFR part 17 (referred to below as the regulations), to eliminate co-payments for weight management counseling (individual and group sessions).

A large number of veterans using VA medical facilities are overweight (body mass index of 25–29.9) or obese (body mass index of 30 or higher). Among male veterans using VA medical facilities in 2000, 40 percent were classified as overweight and 33 percent were classified as obese. Among female veterans using VA medical facilities in

2000, 31 percent were classified as overweight and 37 percent were classified as obese.

Poor diet and physical inactivity are rapidly overtaking smoking as the leading preventable cause of morbidity and mortality in the United States. Further, most of the morbidity and mortality related to poor diet and physical inactivity can be attributed to excess weight. However, even modest weight loss and increased physical activity can result in improved health outcomes, especially for individuals with diabetes or likely to get diabetes, a highly prevalent condition among veterans seeking healthcare at VA facilities. Being overweight or obese are also conditions clearly associated with coronary heart disease (CHD), CHD risks (hypertension, hyperlipidemia), certain cancers, gallbladder disease, obstructive sleep apnea, osteoarthritis, and all-cause mortality. Consequently, the health care costs for obesity-associated conditions throughout the United States are substantial with estimates of the total annual expenditures in the United Sates consisting of as much as $107.2 billion in 2006 dollars.

To combat the effects of being overweight or obese, VA has established "Managing Overweight/Obesity for Veterans Everywhere!" (*MOVE!*). This is a comprehensive, evidence-based weight management program that consists of both individual and group counseling.

Currently, VA regulations require many veterans to agree to make co-payments as a condition for participation in the *MOVE!* program. However, field providers report that co-payments are a significant barrier to participation in the counseling program. The co-payment requirement is estimated to generate approximately $1,001,294 annually. However, we believe that not imposing co-payments would be clearly cost effective based on the conclusion that the costs of healthcare for overweight and obese individuals become significantly lower as they lose weight. Accordingly, we are eliminating co-payments for weight management counseling.

The *MOVE!* program is based primarily upon the National Institutes of Health/ National Heart, Lung, and Blood Institute's *Clinical Guidelines for the Identification, Evaluation, and Treatment of Overweight and Obesity* and is consistent with the weight management recommendations of the U.S. Preventive Services Task Force, supported by the Agency for Healthcare Research and Quality in the Department of Health and Human Services. An Executive Council consisting of federal weight management experts and external expert advisors reviewed *MOVE!* and declared the *MOVE!* program to be consistent with current medical guidance and recommendations for weight management.

MOVE! became widely implemented across VA facilities as a standard clinical program over the past several years. The *MOVE!* program provides much of its care through frequent group sessions, a very effective and efficient format of weight management care. Effective treatment typically results in a 5–10 percent weight loss, which is associated with improvement in weight-related conditions such as hypertension, dyslipidemia, and diabetes. VA expects that elimination of the copayment associated with weight management treatment visits will facilitate continued patient engagement in treatment, resulting in better clinical outcomes. Over the long run, the loss in revenue from elimination of the copayment is expected to be off-set by lower health care costs for weight-related conditions.

Limited research exists to fully understand the exact impact of a policy change such as this. While VA expects this change to be cost effective in the long run, VA will monitor results to assist in future decision-making concerning this and similar programs. VA will work with its research community to retrospectively evaluate the impact of this policy change.

This document also amends 38 CFR 17.47(e)(2) by making nonsubstantive changes to correct references to statutory provisions. Section 17.47(e)(2) currently states that if a veteran provided inaccurate information on an application and is incorrectly deemed eligible for care under 38 U.S.C. 1710(a)(1) rather than section 1710(a)(2), VA shall retroactively bill the veteran for the applicable copayment. When § 17.47(e)(2) was initially promulgated, section 1710(a)(2) pertained to veterans who were not described in section 1710(a)(1) and who were therefore subject to the copayment requirements then set forth in section 1710(f). In 1996, section 1710(a) was amended by section 101(a) of Public Law 104–262. Under the amendments, veterans previously described in section 1710(a)(1) are now described in section 1710(a)(1) and (a)(2). Veterans previously described in section 1710(a)(2) are now described in section 1710(a)(3). The amendment to § 17.47(e)(2) corrects the references to these statutory provisions.

Administrative Procedure Act

VA anticipates that this non-controversial rule will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature, which remove restrictions on VA medical benefits to improve health outcomes, have not been controversial and have not resulted in significant adverse comments or objections. However, in the "Proposed Rules" section of this **Federal Register** publication we are publishing a separate, substantially identical proposed rule document that will serve as a proposal for the provisions in this direct final rule if significant adverse comments are filed. (See RIN 2900–AM81).

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without change. If significant adverse comments are received, the VA will publish a notice of receipt of significant adverse comments in the **Federal Register** withdrawing the direct final rule.

Under direct final rule procedures, unless significant adverse comments are received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, VA will publish a document in the **Federal Register** indicating that no adverse comments were received and confirming the date on which the final rule will become effective. VA will also publish a notice withdrawing the proposed rule, RIN 2900–AM81.

In the event the direct final rule is withdrawn because of receipt of significant adverse comments, VA can proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the direct final rule will be treated as comments regarding the proposed rule. Likewise, significant adverse comments submitted to the proposed rule will be considered as comments to the direct final rule. The VA will consider such comments in developing a subsequent final rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the rule would not directly affect any small entities. Only individuals could be directly affected.

Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this direct final rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in the Executive Order.

Paperwork Reduction Act

This document does not contain any provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; and 64.012, Veterans Prescription Service.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: December 26, 2007.

James B. Peake,

Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on April 11, 2008.

■ For the reasons set out in the preamble, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Amend § 17.108 by redesignating paragraphs (e)(12) and (e)(13) as paragraphs (e)(13) and (e)(14), respectively; and by adding a new paragraph (e)(12) to read as follows:

§ 17.108 Co-payments for inpatient hospital care and outpatient medical care.

* * * * *

(e) * * *

(12) Weight management counseling (individual and group);

* * * * *

■ 3. In § 17.47(e)(2), remove "under 38 U.S.C. 1710(a)(1) rather than § 1710(a)(2)" and add, in its place, "under 38 U.S.C. 1710(a)(1) or (a)(2) rather than 38 U.S.C. 1710(a)(3)".

[FR Doc. E8–8097 Filed 4–15–08; 8:45 am]
BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Pricing and Requirement Changes for Competitive Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) to reflect changes to the prices and standards for the following competitive products, now referred to as Shipping Services:

- Express Mail®
- Priority Mail®
- Parcel Select®
- Parcel Return Service®

DATES: *Effective Date:* May 12, 2008.

FOR FURTHER INFORMATION CONTACT: Bert Olsen at 202–268–7276 or Monica Grein at 202–268–8411.

SUPPLEMENTARY INFORMATION: The Postal Accountability and Enhancement Act of 2006 (PAEA) gives the Postal Service increased flexibility in pricing, product enhancements, and product introductions. On March 4, 2008, the Governors of the Postal Service established new prices and product features for Shipping Services. This **Federal Register** notice describes these price and product changes and the mailing standards changes needed to implement them.

Express Mail

We are moving from Express Mail prices based only on weight to zone-based prices based on weight and distance, consistent with standard industry practices. On average, Express Mail prices will increase 3 percent, with larger increases for heavier pieces and pieces destined for Zones 5 through 8 (mail transported more than 600 miles).

Express Mail commercial base prices are 3 percent lower than retail prices and will be available to customers who: use Express Mail Corporate Accounts (EMCA), including Federal Agency Accounts or Click-N-Ship®; or are registered end-users of PC Postage™ (e.g. Stamps.com®, endicia™, and Pitney Bowes) using shipping labels.

To encourage growth, commercial volume rebates will be provided to customers whose account volume exceeds a minimum threshold, and who either use an Express Mail Corporate Account (EMCA), including Federal Agency Accounts or are registered end-users of PC-Postage (e.g. Stamps.com, endicia, and Pitney Bowes) using shipping labels. The rebate will be credited to each qualifying mail owner's

account each postal quarter. These rebates are intended for end users; therefore, third-party consolidators and postage resellers are not eligible. We will work with other vendors to authorize additional systems to expand the availability of commercial volume prices.

The new Express Mail flat-rate envelope price is $16.50. We will be eliminating the separate price schedules for Post Office-to-Post Office and Custom Designed Services and have renamed "Posi Office-to-Post Office" as "Hold for Pickup." We will continue to notify customers when the first delivery attempt of an Express Mail piece is made, and we will provide a second notice on the third day. However, we will no longer make a second delivery attempt unless requested by the customer. Express Mail Same Day Airport Service will be eliminated.

Priority Mail

Priority Mail retail prices are increasing by 6 percent, on average, with individual prices increasing from zero to 10 percent. The price increases tend to be larger for relatively heavy pieces and for pieces that are transported relatively long distances.

Priority Mail commercial base prices are lower than retail prices and will be available to: customers who use Click-N-Ship; registered end-users of PC-Postage products when using a shipping label; and customers using permit imprint with electronic confirmation services and effective October 1, 2008, a barcode under 708.5.0 for the ZIP Code of the delivery address.

Parcel Select

On average Parcel Select prices are increasing by 5.7%. The new prices are intended to encourage Parcel Select shippers to enter parcels at destination delivery units (DDU).

To encourage growth and continued use of Parcel Select, we will be offering annual rebates to large-volume shippers. The rebates will be available to shippers whose total annual Parcel Select postage is at least $5 million and whose Parcel Select volume increases over their total volume for the previous year. These shippers will receive rebates on all DDU volumes. Customers whose Parcel Select volume grows by more than 10% will be eligible for an additional rebate applied only to qualified incremental DDU volume.

Parcel Return Service

Parcel Return Service is the Postal Service's bulk return product. It consists of returns to the delivery unit (RDU) and returns to the BMC (RBMC). The overall average price increase is 2.2 percent. However, the average RDU price is significantly reduced. Currently, a single RDU price is charged regardless of the weight of the piece. In the new structure, the RDU price will vary by weight.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a) 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Express Mail

[Revise heading of 113, Rates and Eligibility, to "Prices and Eligibility" as follows:]

113 Prices and Eligibility

[Revise the heading of 1.0; Express Mail Rates and Fees, to "Express Mail Prices and Fees" as follows:]

1.0 Express Mail Prices and Fees

* * * * *

[Revise the heading of 1.1, Rates Charged Per Piece, to "Prices Charged Per Piece" as follows:]

1.1 Prices Charged per Piece

[Revise the first sentence as follows:]

Express Mail postage is charged for each addressed piece according to its weight and zone. * * *

[Revise the heading of 1.2; Express Mail Rate Application, to "Price Application" as follows:]

1.2 Price Application

[Revise text of 1.2 by adding a new last sentence.]

* * * Except for the Express Mail flat-rate envelope, Express Mail prices are based on weight and zone.

[Revise Exhibit 1.3 by revising the heading and inserting a new price list.]

Exhibit 1.3 Express Mail Prices—Retail Letters, Flats, & Parcels

[Insert new price list.]

1.4 Flat-Rate Envelope

[Revise text of 1.4 as follows:]

Material mailed in the USPS-provided Express Mail flat-rate envelope is charged $16.50 (retail) or $16.00 (commercial), regardless of the actual weight of the piece or its destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope price.

[Renumber current 1.5 through 1.8 as new 1.7 through 1.10, and add new 1.5 and 1.6 as follows:]

1.5 Commercial Base Prices

Express Mail commercial base prices are 3 percent below retail prices. These prices apply to:

a. Customers who use an Express Mail Corporate Account (EMCA), including Federal Agency Accounts.

b. Click-N-Ship customers.

c. Registered end-users of PC-Postage products when using a shipping label.

1.6 Commercial Volume Rebates

Quarterly rebates will be provided to customers whose account volume exceeds a minimum threshold and who either use an Express Mail Corporate Account (EMCA), including Federal Agency Accounts, or are registered end-users of PC-Postage products when using a shipping label. These rebates are intended for end users; third-party consolidators and postage resellers are not eligible. Rebates are available for Express Mail volume mailed beginning July 1, 2008. Rebates are calculated based on volume of Express Mail mailed in a postal quarter. The quarterly rebate is credited to each qualifying mail owner's account. See Exhibit 1.6, *Commercial Volume Rebates.*

[Insert new Exhibit 1.6 as follows:]

Exhibit 1.6 Commercial Volume Rebates

Minimum quarterly volume	Additional percentage off retail prices (rebate) (percent)
125	2.0
438	4.5
938	7.0

If the rebate expected is not received within 90 days after the close of the next postal quarter, an appeal may be made to manager, Mailing Standards.

* * * * *

1.8 Pickup on Demand

1.8.1 Pickup on Demand Fee

[Revise the first sentence of renumbered 1.8.1 to reflect the new price:]

Per occurrence: $14.75. * * *

* * * * *

1.9 Delivery Stop

* * * * *

1.9.2 Fee for Delivery Stops

[Revise the text of renumbered 1.9.2 to reflect the new price.]

Custom Designed Service only, each: $14.75.

* * * * *

2.0 Basic Eligibility Standards for Express Mail

2.1 Definition of Express Mail

[Revise text of 2.1 to as follows:]

Express Mail is an expedited service for shipping any mailable matter, with guaranteed delivery, subject to the standards below. Express Mail International is available between the United States and most foreign countries (see the International Mail Manual).

* * * * *

4.0 Service Features of Express Mail

* * * * *

[Replace "Express Mail Next Day Service" with "Express Mail Next Day Delivery" and "Next Day Service" with "Next Day Delivery" throughout 4.2.]

4.2 Express Mail Next Day Delivery

[Revise heading of 4.2.1 as follows:]

4.2.1 Availability

[Revise text of 4.2.1 as follows:]

Express Mail Next Day Delivery is available at designated USPS facilities, designated Express Mail collection boxes, or through Carrier Pickup or Pickup on Demand service, for overnight service to designated destination 3-digit ZIP Code delivery areas, facilities, or locations (Post Office to Addressee Service). Items are delivered to an addressee within the designated delivery area of the destination facility by noon or 3 p.m. on the next day. If delivery is not made, the addressee is notified, a second notice is left on the third day, and a second delivery is attempted upon customer request. For additional options, see 4.2.4, *Hold for Pickup and 4.4, Custom Designed.*

* * * * *

[Revise heading of 4.2.4 as follows:]

4.2.4 Hold for Pickup

[Revise text by replacing "Post Office to Post Office" with "Hold for Pickup" and revising the reference as follows:]

Under Hold for Pickup service, items presented under *4.2.1, Availability,* are available for claim by the addressee at the destination facility by 10 a.m., 12 p.m., or 3 p.m. of the next day the destination office is open for retail business.

[Delete 4.2.5, Post Office to Addressee and renumber current 4.2.6 as 4.2.5.]

[Revise heading of new 4.2.5 from Express Mail Next Day Service Delivery Refunds, to "Express Mail Next Day Delivery Refunds".]

* * * * *

[Replace "Express Mail Second Day Service" with "Express Mail Second Day Delivery" throughout 4.3.]

4.3 Express Mail Second Day Delivery

4.3.1 Availability

[Revise text of 4.3.1 as follows:]

Express Mail Second Day Delivery is available to any 3-digit or 5-digit ZIP Code destination not listed in the Next Day Delivery directory mentioned in 4.2.2 (Post Office to Addressee Service). Items are delivered to an addressee within the designated delivery area of the destination facility by noon or 3 p.m. on the second delivery day. If delivery is not made, the addressee is notified, a second notice is left on the third day, and a second delivery is attempted upon customer request. For additional options, see 4.3.4, *Hold for Pickup* and 4.4, *Custom Designed.*

* * * * *

[Revise heading of 4.3.4 as follows:]

4.3.4 Hold for Pickup

[Revise text by replacing "Post Office to Post Office" with "Hold for Pickup Service":]

Under Hold for Pickup Service, items presented under 4.3.3 are available for pick up by the addressee at the destination facility by 10 a.m., 12 p.m., or 3 p.m. of the second delivery day that the destination office is open for retail business.

[Delete 4.3.5, Post Office to Addressee, and renumber current 4.3.6 as 4.3.5.]

* * * * *

[Delete 4.4, Express Mail Same Day Airport Service (Suspended) in its entirety, and renumber current 4.5 through 4.7 as new 4.4 through 4.6.]

[Revise heading of renumbered 4.4 as follows:]

4.4 Custom Designed

4.4.1 Availability

[Revise text of 4.4.1 as follows:]

A service agreement is required for Custom Designed mailings. An Express Mail Manifesting agreement is required for all manifested Express mail items accepted under 705.2.6, *Express Mail Manifesting Agreements.*

* * * * *

[Delete 4.5.4 and renumber current 4.5.5 through 4.5.10 as new 4.5.4 through 4.5.9.]

* * * * *

114 Postage Payment Methods

* * * * *

2.0 Corporate Accounts

* * * * *

[Renumber current 2.4 through 2.6 as new 2.6 through 2.8 and insert new 2.4 and 2.5 as follows:]

2.4 Commercial Base Prices

Customers who use an Express Mail Corporate Account (EMCA) or a Federal Agency Account pay the commercial base prices (113.1.5).

2.5 Commercial Volume Rebates

Customers who use an EMCA or a Federal Agency Account and whose volume exceeds a minimum threshold will receive a volume-based incentive in the form of a quarterly rebate (113.1.6).

* * * * *

115 Mail Preparation

* * * * *

2.0 Express Mail Next Day and Second Day

2.1 Mailing Label

[Revise the first sentence to replace "Post Office to Post Office" with "Hold for Pickup".]

For each Express Mail item, the mailer must complete a mailing label—either Label 11–A or Label 11–E for Hold for Pickup service, or Label 11–B or Label 11–F for Post Office to Addressee service. * * *

* * * * *

[Delete 4.0, Express Mail Same Day Airport Service (Suspended) and renumber current 5.0 as new 4.0.]

* * * * *

116 Deposit

* * * * *

[Delete 2.0, Express Mail Same Day Airport Service (Suspended) and renumber current 3.0 through 5.0 as new 2.0 through 4.0.]

* * * * *

120 Priority Mail

[Revise heading of 123, Rates and Eligibility, to "Prices and Eligibility]".

123 Prices and Eligibility

[Revise heading of 1.0 to replace "Rates" with "Prices]".

1.0 Priority Mail Prices and Fees

[Revise heading of 1.1 to replace "Rates" with "Prices]".

1.1 Price Application

[Revise text by replacing "rate" with "price" and deleting the last sentence.]

Except under 1.2, 1.3, and 1.4, Priority Mail prices are charged per pound; any fraction of a pound is rounded up to the next whole pound. For example, if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds. The minimum postage amount per addressed piece is the 1-pound price. The Priority Mail price up to 1 pound is based on weight only; prices for pieces weighing more than 1 pound are based on weight and zone. Other charges may apply.

[Add new 1.1.1 and 1.1.2 to separate Retail Prices and Commercial Base Prices as follows:]

1.1.1 Retail Prices

See Exhibit 1.2a, *Priority Mail Prices—Retail.*

1.1.2 Commercial Base Prices

See Exhibit 1.2b, *Priority Mail Prices—Commercial.* The commercial base prices are available for:

a. Click-N-Ship customers.

b. Registered end-users of PC-Postage products when using a shipping label.

c. Customers using permit imprint with electronic confirmation services and effective October 1, 2008, a barcode under 708.5.0 for the ZIP Code of the delivery address.

* * * * *

[Renumber Exhibit 1.2 as 1.2a and revise title as follows:]

Exhibit 1.2a Priority Mail Retail

[Insert new Price List.]

* * * * *

[Insert new Exhibit 1.2b, Priority Mail Commercial.]

[Insert new Price List.]

[Revise heading of 1.3 by changing "Rate" to "Price" as follows:]

1.3 Dimensional Weight Price for Low-Density Parcels to Zones 5–8

* * * * *

1.3.2 Determining Dimensional Weight for Nonrectangular Parcels

Follow these steps to determine the dimensional weight for a nonrectangular parcel:

* * * * *

[Revise item e by replacing "parcel" with "customer" and "rate" with "price":]

e. If the dimensional weight exceeds 70 pounds, the customer pays the 70-pound price.

[Revise heading of 1.4 as follows:]

1.4 Flat-Rate Envelope and Boxes

* * * * *

[Revise heading of 1.4.1 as follows:]

1.4.1 Flat-Rate Envelope-Price and Eligibility

[Revise text by replacing "rate" with "price," and adding reference to commercial-based prices.]

The retail price for USPS-produced Priority Mail flat-rate envelope is $4.80 and the commercial base price is $4.75, regardless of the actual weight of the piece or its destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope price.

[Revise heading of 1.4.2 as follows:]

1.4.2 Flat-Rate Boxes Price and Eligibility

[Revise item a to update the price of the flat-rate box and revise item a through item c to add reference to the commercial prices.]

* * * * *

a. $9.80 (retail) or $9.30 (commercial) for material sent in Priority Mail regular flat-rate boxes (FRB–1 or FRB–2) to domestic and APO/FPO addresses.

b. $10.95 (retail) or $10.50 (commercial) for material sent in a Priority Mail large flat-rate box to APO/FPO destination addresses (see 703.2).

c. $12.95 (retail) or $12.50 (commercial) for material sent in a Priority Mail large flat-rate box to domestic destinations.

* * * * *

[Revise heading of 1.5 by replacing "Rates" with "Prices]".

1.5 Prices for Keys and Identification Devices

[Revise table by replacing "Rate" with "Price" and updating prices.]

Weight not over (pounds)	Price [1]
1 pound	$5.52
2 pounds [2]	6.32

[Revise Footnote 1 by replacing "Rates" with "Prices".]

1. Prices shown include $0.72 fee.* * *

* * * * *

1.7 Pickup on Demand Fee

[Revise text of 1.7 as follows:]

Per occurrence: $14.75. May be combined with Express Mail and Package Services pickups (see *507.5.0, Pickup on Demand Service*).

* * * * *

[Revise section heading by changing "Discount" to "Commercial" as follows:]

400 Commercial Parcels

* * * * *

[Revise section heading by changing "Discount Parcels—Parcel Post" to "Parcel Select" as follows:]

450 Parcel Select

* * * * *

456 Enter and Deposit

* * * * *

2.0 Parcel Select

* * * * *

[Renumber current 2.2.4 and 2.2.5 as 2.2.6 and 2.2.7 and add new 2.2.4, Exhibit 2.2.4, 2.2.5, and Exhibit 2.2.5 as follows:]

2.2.4 Loyalty Rebates

Beginning June 1 through August 1, 2009 and each June 1 through August 1 period thereafter, shippers may apply to the manager, Business Mailer Support (see 608.8), for Loyalty Rebates based on their level of Parcel Select activity during the most recent twelve-month (June 1–May 31) period.

To qualify for the Loyalty Rebates, shippers must meet the following:

a. Total annual Parcel Select postage must be in excess of $5 million during the most recent twelve-month (June 1–May 31) period.

b. Total Parcel Select volume must have increased during the most recent twelve-month (June 1–May 31) period, compared with the previous twelve-month (June 1–May 31) period.

c. Use eVS as of May 31, 2009.

d. Identify both the mail owner and mailing agent within the electronic manifest.

For shippers meeting all of the eligibility criteria, the percentage level of their Loyalty Rebate is based on their total Parcel Select postage during the most recent twelve-month (June 1–May 31) period, as shown in Exhibit 2.2.4.

The Loyalty Rebate is applied to all DDU volume. The Loyalty Rebate amount is calculated as the average postage per DDU piece over the twelve-month period for that shipper, times the volume of qualified DDU volume over the twelve-month period for that shipper, times the applicable percentage shown in Exhibit 2.2.4.

Exhibit 2.2.4 Loyalty Rebate

Annual total parcel select postage	$5M	$25M	$50M	$100M	$300M	$500M
Rebate on DDU Volume	0.25%	0.50%	0.75%	1.00%	1.25%	1.50%

2.2.5 Growth Rebates

Beginning June 1, 2009, and each June 1 thereafter, shippers who qualify for a Loyalty Rebate and who increase their Parcel Select volumes in the most recent twelve-month (June 1–May 31) period (compared with the previous twelve-month period) by more than 10 percent will qualify for a Growth Rebate. (Shippers who had zero Parcel Select volume in the previous twelve-month period will not be eligible for a Growth Rebate.)

For shippers meeting all of the eligibility criteria, the percentage level of the Growth Rebate is based on their growth percentage and their total Parcel Select revenue in the twelve-month period, as shown in Exhibit 2.2.5.

The Growth Rebate is applied only to qualified incremental DDU volume. The Growth Rebate amount will be calculated by multiplying the difference between the previous twelve-month DDU volume and the most recent twelve-month DDU volume by the average postage per DDU piece over the current twelve-month period, times the applicable percentage shown in Exhibit 2.2.5.

Exhibit 2.2.5 Growth Rebate

Total parcel select postage to qualify	>$5M (percent)	>$25M (percent)	>$50M (percent)	>$100M (percent)	>$300M (percent)	>$500M (percent)
Total parcel select annual growth rate (percent)	Rebate on qualified incremental DDU volume					
>10	2	4	6	8	10	10
>20	4	6	8	10	12	12
>30	6	8	10	12	14	14

At the discretion of the USPS, volumes from the following 3-digit ZIP Codes may be exempt from the Growth Rebates due to delivery conditions: 100–102, 104, 107, 108, 111–113. Growth Rebates may not apply to volume growth as a result of mergers or acquisitions. Exclusions will be administered on a case-by-case basis.

* * * * *

500 Additional Services

* * * * *

507 Mailer Services

* * * * *

13.0 Parcel Return Service

* * * * *

[Revise heading by replacing "Rates" with "Prices"]

13.3 Prices

13.3.1 Parcel Return Service—Return Delivery Unit

[Revise text in 3.1 as follows:]

Return Delivery Unit parcel prices are based on weight as identified in Exhibit 13.3.2 and 13.3.3. Parcels that measure more than 108 inches but not more than 130 inches in combined length and girth must pay the oversized price. RDU postage will be determined by the average weight of pieces retrieved from the RBMC or through a reverse manifest service agreement.

[Revise the heading of Exhibit 13.3.2 to read as follows:]

Exhibit 13.3.2 Parcel Return Service—Return Machinable

[Insert chart]

[Revise the heading of Exhibit 13.3.3 to read as follows:]

Exhibit 13.3.3 Parcel Return Service—Nonmachinable

[Insert chart]

* * * * *

700 Special Standards

703 Nonprofit Standard Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military Mail

2.1 Basic Standards

* * * * *

2.1.2 APO/FPO Priority Mail Flat-Rate Boxes

[Revise text by adding reference to commercial prices at the end of the second paragraph.]

* * * See Exhibit 1.2b, *Priority Mail Prices—Commercial*, for the commercial base price.

We will publish an appropriate amendment to 39 CFR 111.3.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–8210 Filed 4–15–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0165; FRL–8543–6]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve certain revisions to the applicable state implementation plan for the State of Nevada and to disapprove certain other revisions. These revisions involve State rules governing applications for, and issuance of, permits for stationary sources, but not including review and permitting of major sources and major modifications under parts C and D of title I of the Clean Air Act. These revisions involve submittal of certain new or amended State rules and requests by the State for rescission of certain existing rules from the state implementation plan. EPA is taking this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to update the applicable state implementation plan with current State rules with respect to permitting, where consistent with the Clean Air Act.

DATES: *Effective Date:* This rule is effective on *May 16, 2008.*

ADDRESSES: EPA has established docket number EPA–R09–OAR–2007–0165 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms "we," "us," and "our" refer to EPA.

Table of Contents

I. Proposed Action

On April 17, 2007 (72 FR 19144), EPA proposed several actions in connection with certain revisions to the Nevada State Implementation Plan (SIP) submitted by the Nevada Division of Environmental Protection (NDEP) under the Clean Air Act (CAA or "Act"). Our April 17, 2007 proposal covers the State rules that were included in NDEP's January 12, 2006 and December 8, 2006 SIP revision submittals and that govern applications for, and issuance of, permits for stationary sources. We also proposed action on the State's requests for rescission of certain permit-related rules in the existing SIP.[1] Tables 1, 2, and 3 below list the relevant submitted rules and rescission requests covered by our April 17, 2007 proposed rule.

Table 1 lists the submitted rules that, while related to permitting, are separable from the rest of the permitting-related rules and thus qualify for action independent of our action on the bulk of the permitting-related rules. Table 2 lists the submitted set of rules that comprise the bulk of NDEP's stationary source permitting program (excluding review under parts C and D of the title I of the CAA). Table 3 lists the permitting-related rules (in the existing SIP) for which NDEP has requested rescission.

TABLE 1.—SUBMITTED RULES THAT ARE SEPARABLE FROM THE REST OF THE PERMITTING-RELATED RULES

Submitted rule	Title	Adoption date	Submittal date	April 17, 2007 proposed action
NAC 445B.021	"Area source" defined	11/03/93	01/12/06	Disapproval.
NAC 445B.028	"Best available control technology" defined	03/26/96	01/12/06	Disapproval.
NAC 445B.178	"Source reduction" defined	03/03/94	01/12/06	Disapproval.
NAC 445B.196	"Toxic regulated air pollutant" defined	10/03/95	01/12/06	Disapproval.
NAC 445B.22083	Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.	10/04/05	01/12/06	Approval.
NAC 445B.250	Notification of planned construction or reconstruction	10/04/05	01/12/06	Approval.
NAC 445B.252	Testing and sampling	09/18/03	01/12/06	Approval.

In our April 17, 2007 action, we proposed to approve three, and to disapprove four, of the submitted rules we considered separable from the rest of the permitting-related program (see table 1). We proposed approval of Nevada Administrative Code (NAC) 445B.22083, 445B.250, and 445B.252 because they strengthen the SIP and otherwise meet all applicable requirements. We proposed disapproval of NAC 445B.021, 445B.178, and 445B.196 because they define terms that are not used in any of the other submitted rules or in any of the rules of the existing SIP and thus are unnecessary. We proposed to disapprove NAC 445B.028 ("Best Available Control Technology" defined) because it is not used in any of the other submitted rules and is used only in an existing SIP rule for which we proposed to grant NDEP's rescission request.[2]

Table 2 lists the submitted rules governing application for, and issuance of, permits for stationary sources under NDEP jurisdiction in the State of Nevada, excluding the State's rules (yet to be submitted) for review and permitting of major sources and major modifications under parts C and D of title I of the CAA. In our review of these submitted rules, we identified a number of deficiencies that lead us to conclude that the submitted rules do not comply with the requirements of section 110 and 40 CFR part 51, sections 51.160 through 51.164 and that formed the basis for our proposed disapproval.

[1] We note that the stationary source permitting rules that are the subject of this final rule are not intended to satisfy the requirements for pre-construction review and permitting of major sources or major modifications under part C ("Prevention of Significant Deterioration of air quality") or part D ("Plan requirements for nonattainment areas") of title I of the Clean Air Act. Of the 100+ permit-related rules or statutes that were submitted by NDEP for approval or for rescission, we are taking final action today on all but two (but, also, see response to comment #1 for two rules inadvertently left out of our April 17, 2007 proposal). We are deferring action on the State's requests for rescission of rule 25 of general order number 3 of the Nevada Public Service Commission and Nevada Revised Statutes (NRS) 704.820 to 704.900—Construction of utility facilities: utility environmental protection act. Rule 25 of general order number 3 and NRS 704.820–900 relate to new source review under part D, and as such, we will take action on the State's related rescissions after the State submits, and we take action on, a revised "nonattainment" new source review program under part D of title I of the Clean Air Act.

[2] "Best Available Control Technology" (BACT) is the control technology requirement under EPA's Prevention of Significant Deterioration (PSD) regulations for pre-construction review and permitting of new major sources and major modifications in attainment or unclassifiable areas, and we would expect this definition to be re-submitted by NDEP when they submit their rules implementing PSD for approval by EPA as a SIP revision.

TABLE 2.—SUBMITTED RULES GOVERNING APPLICATION FOR, AND ISSUANCE OF, PERMITS FOR STATIONARY SOURCES UNDER NDEP JURISDICTION

Submitted rule	Title	Adoption date	Submittal date
NAC 445B.003	"Adjacent properties" defined	11/03/93	01/12/06
NAC 445B.0035	"Administrative revision to a Class I operating permit" defined	08/19/04	01/12/06
NAC 445B.007	"Affected state" defined	11/03/93	01/12/06
NAC 445B.013	"Allowable emissions" defined	10/04/05	01/12/06
NAC 445B.014	"Alteration" defined	10/03/95	01/12/06
NAC 445B.016	"Alternative operating scenarios" defined	10/03/95	01/12/06
NAC 445B.019	"Applicable requirements" defined	01/22/98	01/12/06
NAC 445B.035	"Class I–B application" defined	10/03/95	01/12/06
NAC 445B.036	"Class I source" defined	08/19/04	01/12/06
NAC 445B.037	"Class II source" defined	09/18/01	01/12/06
NAC 445B.038	"Class III source" defined	09/18/01	01/12/06
NAC 445B.044	"Construction" defined	10/04/05	01/12/06
NAC 445B.046	"Contiguous property" defined	09/16/76	01/12/06
Sec. 2 of R096–05	"Dispersion technique" defined	10/04/05	01/12/06
Sec. 3 of R096–05	"Excessive concentration" defined	10/04/05	01/12/06
NAC 445B.066	"Existing stationary source" defined	10/03/95	01/12/06
NAC 445B.068	"Facility" defined	10/03/95	01/12/06
NAC 445B.069	"Federally enforceable" defined	11/03/93	01/12/06
NAC 445B.070	"Federally enforceable emissions cap" defined	11/03/93	01/12/06
NAC 445B.082	"General permit" defined	10/03/95	01/12/06
Sec. 4 of R096–05	"Good engineering practice stack height" defined	10/04/05	01/12/06
NAC 445B.087	"Increment" defined	11/03/93	01/12/06
NAC 445B.093	"Major modification" defined	08/19/04	01/12/06
NAC 445B.094	"Major source" defined	05/10/01	01/12/06
NAC 445B.0945	"Major stationary source" defined	08/19/04	01/12/06
NAC 445B.099	"Modification" defined	10/03/95	01/12/06
NAC 445B.104	"Motor vehicle" defined	05/10/01	01/12/06
Sec. 5 of R096–05	"Nearby" defined	10/04/05	01/12/06
NAC 445B.108	"New stationary source" defined	10/03/95	01/12/06
NAC 445B.117	"Offset" defined	10/03/95	01/12/06
NAC 445B.123	"Operating permit" defined	11/19/02	01/12/06
NAC 445B.124	"Operating permit to construct" defined	11/19/02	01/12/06
NAC 445B.1345	"Plantwide applicability limitation" defined	08/19/04	01/12/06
NAC 445B.138	"Potential to emit" defined	03/26/98	01/12/06
NAC 445B.142	"Prevention of significant deterioration of air quality" defined	11/03/93	01/12/06
NAC 445B.147	"Program" defined	11/03/93	01/12/06
NAC 445B.154	"Renewal of an operating permit" defined	11/03/93	01/12/06
NAC 445B.156	"Responsible official" defined	11/03/93	01/12/06
NAC 445B.157	"Revision of an operating permit" defined	08/19/04	01/12/06
NAC 445B.179	"Special mobile equipment" defined	05/10/01	01/12/06
NAC 445B.187	"Stationary source" defined	05/10/01	01/12/06
NAC 445B.194	"Temporary source" defined	05/10/01	01/12/06
NAC 445B.287	Operating permits: General requirements; exception; restriction on transfers.	08/19/04	01/12/06
NAC 445B.288	Operating permits: Exemptions from requirements; insignificant activities	05/10/01	01/12/06
NAC 445B.295	Application: General requirements	09/06/06	12/08/06
NAC 445B.297	Application: Submission of application and supplementary or corrected information.	08/19/04	01/12/06
NAC 445B.298	Application: Official date of submittal	08/19/04	01/12/06
NAC 445B.305	Operating permits: Imposition of more stringent standards for emissions	10/03/95	01/12/06
NAC 445B.308	Prerequisites and conditions for issuance of operating permits: Environmental evaluation; compliance with control strategy; exemption from environmental evaluation.	09/06/06	12/08/06
NAC 445B.310	Environmental evaluation: Applicable sources	09/06/06	12/08/06
NAC 445B.311	Environmental evaluation: Required information	09/06/06	12/08/06
NAC 445B.313	Method for determining heat input: Class I sources	11/19/02	01/12/06
NAC 445B.3135	Method for determining heat input: Class II sources	11/19/02	01/12/06
NAC 445B.314	Method for determining heat input: Class III sources	11/19/02	01/12/06
NAC 445B.315	Contents of operating permits: Exception for operating permits to construct; required conditions.	11/19/02	01/12/06
NAC 445B.318	Operating permits: Separate permit required for each source; form of application; issuance or denial of permit; posting of permit.	09/06/06	12/08/06
NAC 445B.319	Operating permits: Administrative amendment	08/19/04	01/12/06
NAC 445B.325	Operating permits: Termination, reopening and revision, revision, or revocation and reissuance.	01/22/98	01/12/06
NAC 445B.326	Operating permits: Assertion of emergency as affirmative defense to action for noncompliance.	11/03/93	01/12/06
NAC 445B.331	Request for change of location of emission unit	09/06/06	12/08/06
NAC 445B.3361	General requirements	09/06/06	12/08/06
NAC 445B.3363	Operating permit to construct: Application	09/06/06	12/08/06

TABLE 2.—SUBMITTED RULES GOVERNING APPLICATION FOR, AND ISSUANCE OF, PERMITS FOR STATIONARY SOURCES UNDER NDEP JURISDICTION—Continued

Submitted rule	Title	Adoption date	Submittal date
NAC 445B.33637	Operating permit to construct for approval of plantwide applicability limitation: Application.	08/19/04	01/12/06
NAC 445B.3364	Operating permit to construct: Review of application and determination of completeness by director; notice.	09/06/06	12/08/06
NAC 445B.3365	Operating permit to construct: Required conditions	09/06/06	12/08/06
NAC 445B.33656	Operating permit to construct for approval of plantwide applicability limitation: Required conditions and information.	09/06/06	12/08/06
NAC 445B.3366	Operating permit to construct: Expiration; extension	09/06/06	12/08/06
NAC 445B.3368	Application: Additional requirements; exception	08/19/04	01/12/06
NAC 445B.3375	Class I–B application: Filing requirement	09/06/06	12/08/06
NAC 445B.3395	Review of application and determination of completeness by director; notice; expiration of permit.	09/06/06	12/08/06
NAC 445B.340	Prerequisites to issuance, revision or renewal of permit	01/22/98	01/12/06
NAC 445B.342	Revision of permit: Exception when making certain changes; notification of changes.	09/06/06	12/08/06
NAC 445B.3425	Minor revision of permit	08/19/04	01/12/06
NAC 445B.344	Significant revision of permit	11/19/02	01/12/06
NAC 445B.3441	Administrative revision of permit to incorporate conditions of certain permits to construct.	09/06/06	12/08/06
NAC 445B.3443	Renewal of permit	02/26/04	01/12/06
NAC 445B.3453	Application: General requirements	11/19/02	01/12/06
NAC 445B.3457	Application: Determination of completeness by director	09/06/06	12/08/06
NAC 445B.346	Required contents of permit	10/03/95	01/12/06
NAC 445B.3465	Application for revision	10/04/05	01/12/06
NAC 445B.3473	Renewal of permit	02/26/04	01/12/06
NAC 445B.3477	Class II general permit	11/19/02	01/12/06
NAC 445B.3485	Application: General requirements	09/06/06	12/08/06
NAC 445B.3487	Application: Determination of completeness by director	09/06/06	12/08/06
NAC 445B.3489	Required content of permits	09/06/06	12/08/06
NAC 445B.3493	Application for revision	09/18/01	01/12/06
NAC 445B.3497	Renewal of permits	02/26/04	01/12/06

In our April 17, 2007 proposed action, we noted 10 specific deficiencies. First, we found that certain submitted rules use undefined terms, contain incorrect citations, rely on rules or statutory provisions that have not been submitted for approval as part of the SIP, or multiple versions of the same rule were included in the same submittal, and thus are ambiguous.

Second, we concluded that the definition of "potential to emit" in submitted rule NAC 445B.138 must be revised to require effective limits and to include criteria by which a limit is judged to be practicably enforceable by NDEP.

Third, we found that NDEP's stationary source program may not be as inclusive as required under the CAA depending upon whether the exclusion of "special mobile equipment" from the definition of "stationary source" in submitted rule NAC 445B.187 extends to engines and vehicles that are not considered to be "nonroad."

Fourth, we found that the method for determining heat input for class I sources in submitted rule NAC 445B.313 must be amended to require that combustion sources make applicability determinations based on the maximum heat input.

Fifth, we concluded that NAC 445B.331 ("Request for change of location of emission unit") must be amended to limit its applicability to location changes within the confines of the existing stationary source at which the emission unit is originally permitted.

Sixth, we found that submitted rule NAC 445B.3477 ("Class II general permit") must be amended to identify the requirements for general permits, the public participation requirements for issuing such permits, and the criteria by which stationary sources may qualify for such a permit.

Seventh, we found that submitted rule NAC 445B.311 ("Environmental evaluation: Required information") allows for NDEP to authorize use of a modification or substitution of a model specified in appendix W of 40 CFR part 51 without EPA approval and must be amended accordingly to comply with 40 CFR 51.160(f).

Eighth, to comply with 40 CFR 51.161 ("Public availability of information"), we concluded that the relevant submitted rules must be amended to provide for adequate public review of new or modified class II sources. Under submitted rule NAC 445B.3457 ("Application: Determination of completeness by Director"), we noted that NDEP may initiate public notice and comment if, after review of an application for a class II permit, NDEP determines that the change to the stationary source results in a significant change in air quality at any location where the public is present on a regular basis. We found that such a provision does not provide well-defined objective criteria for determining when public notice is required to meet the requirements of 40 CFR 51.161.

With respect to the issue of public review of proposed permits, we found that the submitted provisions for class I sources are generally acceptable with the exception of submitted rule NAC 445B.3364 ("Operating permit to construct: Review of application and determination of completeness by director; notice"). Submitted rule NAC 445.3364 must be amended to specifically require that copies of NDEP's review and preliminary intent to issue or deny a class I operating permit be sent to the Washoe County Health District or the Clark County Department of Air Quality and

Environmental Management for those sources proposed to be constructed or modified in Washoe County or Clark County, respectively. Also, we found that the rules must be amended to provide for public participation for new or modified sources of lead with potential to emit greater than 5 tons per year. See 40 CFR 51.100(k)(2) and 40 CFR 51.161(d).

Ninth, we found that the affirmative defense provision in submitted rule NAC 445B.326 is not approvable under CAA section 110(a)(2) as written because it could be applied to technology-based emission limitations approved into the SIP.

Lastly, while the submitted rules include a specific prohibition on approving a permit for any source where the degree of emission limitation required is affected by that amount of the stack height as exceeds good engineering practice stack height or any other dispersion technique, we found that the relevant provision (i.e., 445B.308(3)) includes director's discretion (* * * if "the Director determines" * * *), which must be removed in order for EPA to approve the rules as meeting the requirements of 40 CFR 51.164.

Table 3 lists the permitting-related rules in the existing SIP for which NDEP has requested rescission and for which we proposed action in our April 17, 2007 proposed rule. In our April 17, 2007 action, we proposed to approve rescission requests for Nevada Air Quality Regulations (NAQR) article 13.1.3(3) and NAC 445.706(2) and proposed to disapprove the rescission requests for NAQR articles 1.60 and 1.72 and NAC 445.715.

TABLE 3.—EXISTING PERMITTING—RELATED SIP RULES FOR WHICH THE STATE HAS REQUESTED RESCISSION

Existing SIP rule	Title	Submittal date	Approval date and FR	April 17, 2007 proposed action
NAQR Article 1.60	Effective date	12/29/78	08/27/81 at 46 FR 43141	Disapproval.
NAQR Article 1.72	Existing facility	12/10/76	08/21/78 at 43 FR 36932	Disapproval.
NAQR Article 13, subsection 13.1.3(3).	[BACT requirement in atainment areas].	03/17/80	04/14/81 at 46 FR 21758	Approval.
NAC 445.706(2)	[payment of fees]	10/26/82	03/27/84 at 49 FR 11626	Approval.
NAC 445.715	Operation permits: revocation	10/26/82	03/27/84 at 49 FR 11626	Disapproval.

In our April 17, 2007 action, we proposed approval of the rescission request for NAQR article 13.1.3(3), which applies a control technology requirement defined by Best Available Control Technology (BACT) to certain new sources in attainment areas for the following reasons:

- Air pollution permit programs developed by States under section 110 of the Clean Air Act are not required to impose a BACT requirement on new sources in attainment areas so long as the program is not intended to satisfy part C of title I of the Act;
- Rescission of the SIP BACT requirement would only act prospectively and would not relax emission limits in any existing permits;
- Rescission would not eliminate the BACT requirement for all new sources in Nevada given that BACT continues to be a requirement for new major sources and major modifications in areas, which are designated as attainment or unclassifiable, under EPA's Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21 (see 40 CFR 52.1485); and
- We find no evidence to suggest that Nevada is relying on the BACT requirement in NAQR article 13.1.3(3) to maintain the National Ambient Air Quality Standards (NAAQS) in any area.

Thus, we concluded that rescission of the BACT requirement in NAQR article 13.1.3(3) from the SIP would not interfere with continued attainment of the NAAQS and can therefore be approved under CAA section 110(l).[3]

We also proposed approval of the rescission request for NAC 445.706(2), which relates to permit fees, because permit fee rules are no longer required for the NDEP portion of the Nevada SIP under CAA section 110(a)(2)(L) given our approval of NDEP's title V program (and related fee requirements). We made our proposed approval of the rescission requests for NAQR article 13.1.3(3) and NAC 445.706(2) contingent upon receipt of documentation from NDEP of notice and public hearing for repeal or rescission of these provisions as required under CAA section 110(l) for all SIP revisions.

In our April 17, 2007 action, we proposed disapproval of the rescission request for NAQR article 1.60 because it defines a term, "effective date," that is relied upon by other terms in the existing SIP that NDEP intends to retain, such as "existing source" as defined in NAQR article 1.73 and "new source" as defined in NAQR article 1.114. We found that the rescission requests for NAQR article 1.72 and NAC 445.715 could otherwise be approved but for the fact that we were proposing disapproval of the submitted set of rules comprising NDEP's current stationary source permitting program (listed in table 2, above). NAQR article 1.72 and NAC 445.715 need to be retained in connection with the stationary source permitting program as approved in the existing SIP, and thus we proposed to disapprove their related rescission requests at this time.

The Technical Support Document (TSD) (dated March 21, 2007) that we prepared for our April 17, 2007 proposed rule provides more details concerning our evaluation of each of the rules listed in tables 1, 2, and 3 and our evaluation of the permitting program as a whole.

II. NDEP's August 20, 2007 SIP Revision Submittal

By letter dated August 20, 2007, NDEP submitted a supplement to the SIP submittal dated January 12, 2006. The August 20, 2007 supplemental SIP submittal includes two statutory provisions and 16 rules, as shown in table 4, below.

The two statutory provisions, Nevada Revised Statutes (NRS) 485.050 ("Motor vehicle" defined) and NRS 482.123 ("Special mobile equipment" defined), are relied upon by one of the rules submitted for approval and included in our April 17, 2007 proposed rule, but had not been submitted for approval into the SIP themselves. We identified their absence as a one of the deficiencies in the submitted permitting program. See 72 FR 19144, at 19148 (April 17, 2007).

The rules contained in NDEP's August 20, 2007 SIP submittal include codifications or recodifications of previously submitted rules. Changes

[3] CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

relative to the previously submitted rules include additional historical notes, updated internal rule references, revised titles, and minor edits. We consider the rules submitted on August 20, 2007 to supersede the previously submitted rules, and because, in substance, the rules submitted on August 20, 2007 are the same as the corresponding rules that were evaluated in our April 17, 2007 proposed rule, we are taking final action on them in today's notice without initiating a new comment period.

TABLE 4.—PROVISIONS INCLUDED IN NDEP'S AUGUST 20, 2007 SIP REVISION SUBMITTAL

Submitted statutory provision or rule	Title	Adoption date	Submittal date
NRS 485.050	"Motor vehicle" defined	No adoption date	08/20/07
NRS 482.123	"Special mobile equipment" defined	No adoption	08/20/07
NAC 445B.013	"Allowable emissions" defined	10/04/05	08/20/07
NAC 445B.036	"Class I source" defined	08/19/04	08/20/07
NAC 445B.044	"Construction" defined	10/04/05	08/20/07
NAC 445B.054	"Dispersion technique"defined	10/04/05	08/20/07
NAC 445B.064	"Excessive concentration" defined	10/04/05	08/20/07
NAC 445B.083	"Good engineering practice stack height" defined	10/04/05	08/20/07
NAC 445B.107	"Nearby" defined	10/04/05	08/20/07
NAC 445B.157	"Revision of an operating permit" defined	08/19/04	08/20/07
NAC 445B.22083	Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels.	10/04/05	08/20/07
NAC 445B.250	Notification of Director: Construction, reconstruction and initial start-up; demonstration of continuous monitoring system performance.	10/04/05	08/20/07
NAC 445B.287(1), (3), and (4)	Operating permits: General requirements; exception; restrictions on transfers.	09/06/06	08/20/07
NAC 445B.297(1)	Application: Submission; certification; additional information	09/06/06	08/20/07
NAC 445B.315	Contents of operating permits: Exception for operating permits to construct; required conditions.	03/08/06	08/20/07
NAC 445B.3368	Additional requirements for application; exception	08/19/04	08/20/07
NAC 445B.342	Certain changes authorized without revision of permit; notification of authorized changes.	10/04/05	08/20/07
NAC 445B.3465	Application for revision	10/04/05	08/20/07

III. Public Comments and EPA Responses

EPA's proposed action provided a 60-day public comment period. See 72 FR 19144 (April 17, 2007). At NDEP's request, we extended the comment period by another 60 days. See 72 FR 31781 (June 8, 2007). During the comment period, we received comments from Michael Elges, Chief, NDEP Bureau of Air Pollution Control, by letter dated August 17, 2007. In addition to the comments themselves, NDEP's August 17, 2007 letter includes four attachments: Attachment A (Draft Proposed Regulation of the State Environmental Commission), attachment B ("ASIP Submittal August 17, 2007"), attachment C ("Clean Copy of the December 8, 2006 ASIP Submittal"), and attachment D ("Commitment to Comply with 40 CFR 51.161(f)").

In the following paragraphs, we summarize the comments and provide our responses thereto. Unless otherwise noted, references in the comments and responses listed below to a TSD relate to the TSD (dated March 21, 2007) that we prepared for our April 17, 2007 proposed rule.

A. Submitted Rules or Rescissions for Which EPA Has Yet To Propose Action

Comment 1: NDEP recounts various SIP revisions submitted as part of the State's efforts in recent years to update a significant portion of the Nevada SIP, including SIP revisions submitted on February 16, 2005, January 6, 2006, and December 8, 2006, and notes that, as of the April 17, 2007 proposed action, the EPA had acted, or proposed action, on every submitted provision and request for rescission with the following exceptions: NAC 445B.200 and 445B.227, which have not been acted on; and the request to rescind existing SIP provision NAC 445.694.

Response 1: We agree with this comment, and discuss our plans for the two submitted rules and one rescission request cited in the comment in the following paragraphs.

Submitted rule NAC 445B.200 ("Violation" defined) would update existing SIP rule NAC 445.649 ("Violation" defined), which we approved on March 27, 1984 at 49 FR 11626, and is used in connection with the permitting program. NAC 445B.200 is acceptable but is not separable from the rest of the permitting program. Thus, it should have been included in the set of rules comprising the permitting program for which we proposed disapproval in our April 17, 2007 action. We anticipate that we will propose approval of this definition at such time as we propose to approve an amended, and re-submitted, permitting program.

Submitted rule NAC 445B.227 ("Prohibited conduct: Operation of source without required equipment; removal or modification of required equipment: modification of required procedure") would update existing SIP rule NAC 445.664 ("Pollution control equipment: Operation; modification; removal"), which we approved on March 27, 1984 at 49 FR 11626. NAC 445B.227 is acceptable and, while it is related to the permit program, it is separable from it. Thus, it should have been proposed for approval along with the other separable rules that were proposed for approval on April 17, 2007. We do not expect to take action on NAC 445B.227 as part of our rulemakings on the permitting program but will take action on it in a separate rulemaking.

Existing SIP rule NAC 445.694 ("Emission discharge information") was included in the list of SIP definitions and rules for which NDEP requested rescission in NDEP's January 12, 2006

SIP revision submittal. On August 28, 2006 (71 FR 50875), we proposed action on the vast majority of requested rescissions. In the TSD (dated August 16, 2006) that we prepared for that proposal, we concluded that NAC 445.694 relates to a specific SIP requirement but deferred any action on the rescission of NAC 445.694 to allow NDEP the opportunity to explain how other SIP rules meet the same SIP purposes as NAC 445.694 thereby making the latter rule unnecessary for retention in the SIP. To date, no explanation has been forthcoming. Because NAC 445.694 is not related to the permitting program, we do not expect to propose action on NAC 445.694 as part of our rulemakings on the permitting program but will take action in a separate rulemaking.

B. Submitted Rules Found to be Separable From Rest of Permitting Program

Comment 2: NDEP agrees with the proposed actions on the seven rules found to be separable from the set of rules comprising the permitting program.

Response 2: We are finalizing in today's action our disapproval of four submitted definitions: NAC 445B.021 ("Area source" defined), NAC 445B.028 ("Best available control technology" defined), NAC 445B.178 ("Source reduction" defined), and NAC 445B.196 ("Toxic regulated air pollutant" defined) because these definitions are not used in the submitted SIP nor in the existing SIP.

We are also finalizing our approval of three rules submitted by NDEP: NAC 445B.22083 ("Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels") and NAC 445B.250 ("Notification of Director: Construction, reconstruction and initial start-up; demonstration of continuous monitoring system performance"), and NAC 445B.252 ("Testing and sampling") because they update and strengthen the SIP. With respect to NAC 445B.22083 and 445B.250, NDEP submitted the most current versions in a SIP revision submittal dated August 20, 2007. The versions of NAC 445B.22083 and 445B.250 submitted on August 20, 2007 represent recodifications of the versions submitted on January 12, 2006 and proposed for approval on April 17, 2007 and thus differ only in minor respects (e.g., titles, updated internal rule references, and historical notes). In this final action, we are approving the August 20, 2007 submitted versions of NAC 445B.22083 and 445B.250.

Our approval of these rules has the effect of replacing the following rules in the applicable SIP: NAC 445B.22083, as submitted on November 30, 2003 and approved on September 7, 2004 (69 FR 54006), NAQR article 2.16.1, as submitted on December 10, 1976 and approved on August 21, 1978 (43 FR 36932), and NAC 445.682, as submitted on October 26, 1982 and approved on March 27, 1984 (49 FR 11626).

C. Rules Comprising the Submitted Permit Program

1. Definitions

Comment 3: With respect to EPA's evaluation of NAC 445B.036 ("Class I source" defined), NDEP disagrees with EPA's conclusion that the definition should be clarified.

Response 3: We continue to maintain that clarification of the definition would be helpful for the reasons set forth in the TSD on pages 13–14, but we do not view the marginal potential for confusion inherent in the rule's current form to be an approvability issue.

Comment 4: In response to EPA's evaluation of NAC 445B.038 ("Class III source" defined), NDEP agrees to propose a change in the definition to deny Class III status to sources that are subject to 40 CFR part 63.

Response 4: A change in the definition in NAC 445B.038 consistent with the draft revision shown in attachment A to NDEP's comment letter would fully respond to EPA's findings related to this definition.

Comment 5: In response to EPA's evaluation of NAC 445B.069 ("Federally enforceable" defined), NDEP agrees to propose a change in the definition to more closely mirror the Federal definition.

Response 5: A change in the definition in NAC 445B.069 consistent with the draft revision shown in attachment A to NDEP's comment letter would partially respond to EPA's findings related to this definition. However, to avoid unnecessary ambiguity, we continue to believe NAC 445B.069 must more closely match EPA's definition of "federally enforceable." For instance, the draft revised version of NAC 445B.069 provided in attachment A to NDEP's comment letter, while improved from the existing version, does not include "requirements within any applicable State implementation plan," a source of enforcement authority that should be cited in the definition of this term.

Comment 6: In response to EPA's evaluation of "Section 4 of Regulation R096–05" ("Good engineering practice stack height" defined), NDEP intends to propose the adoption of the definition of "commence" as found in 40 CFR 51.166(b)(9).

Response 6: Adoption of a definition for the term, "commence," as shown in attachment A of NDEP's comment letter, would fully respond to EPA's findings with respect to "Section 4 of Regulation R096–05."

Comment 7: In response to EPA's evaluation of NAC 445B.104 ("Motor vehicle" defined), NDEP intends to submit the statutory provision (NRS 485.050) upon which NAC 445B.104 relies.

Response 8: Submittal of NRS 485.050 ("Motor vehicle" defined) as shown in attachment B of NDEP's comment letter would fully respond to EPA's findings with respect to NAC 445B.104.

Comment 9: With respect to EPA's evaluation of NAC 445B.138 ("Potential to emit" defined), NDEP disagrees with our conclusion that the definition must be amended and believes that when the definition of "potential to emit" (PTE) in NAC 445B.138 is considered with the definition of "enforceable" in NAC 445B.060, NDEP's ability to determine PTE is clear and practicably enforceable and does not hinder Federal enforcement under the SIP.

Response 9: We disagree that the definition of "enforceable" in NAC 445B.060, which states "'Enforceable' means enforceable under federal, state or local law," addresses the deficiency identified by EPA in the definition of PTE in NAC 445B.138 in the proposed rule and described in more detail on pages 19–20 of the TSD. In the proposed rule, we concluded that the definition of "potential to emit" in submitted rule NAC 445B.138 must be revised to require effective limits and to include criteria by which a limit is judged to be practicably enforceable by NDEP. In other words, PTE limits must be legally *and* practicably enforceable, and the current definition of PTE in NAC 445B.138 satisfies the former (i.e., legal authority to enforce) but not the latter (i.e., practicable to enforce). By including criteria under which a limit is determined by NDEP to be effective as a practical matter (examples of such criteria are included in the TSD), NDEP can address the issue of practicable enforcement.

Whereas the proposed rule calls for the definition in NAC 445B.138 to be amended, we now believe that NDEP has several options for fixing the deficiency discussed above. A rule change is one option, but other options, such as the development of policy documents to be relied upon by NDEP permitting staff to establish permit limits that are practicably enforceable,

or some combination of rule change and policy guidance, could also accomplish the same overall objective. The objective is to ensure that any physical or operational limitations on the capacity of stationary source to emit a regulated air pollutant that is treated as part of the source's design for the purposes of determining PTE is both legally *and* practicably enforceable.

Comment 10: In response to EPA's evaluation of NAC 445B.179 ("Special mobile equipment" defined), NDEP intends to submit the statutory provision (NRS 482.123) upon which NAC 445B.179 relies.

Response 10: Submittal of NRS 482.123 ("Special mobile equipment" defined) as shown in attachment B of NDEP's comment letter would fully respond to EPA's findings with respect to NAC 445B.179.

Comment 11: With respect to EPA's evaluation of NAC 445B.187 ("Stationary source" defined), NDEP plans no changes to this definition. NDEP indicates that the State's definition of "special mobile equipment" is more expansive than the Federal definition of "nonroad engine" in 40 CFR 89.2 and is therefore being retained. NDEP believes that it is clear that "special mobile equipment," as defined by the State, does not include engines that are used in stationary applications.

Response 11: On pages 21–22 of our TSD, we explain that the definition of "stationary source" in NAC 445B.187 is acceptable if NDEP can explain how the submitted definition complies with CAA section 302(z) notwithstanding the exclusion of internal combustion engines that do not fall within the nonroad engine or nonroad vehicle categories. NDEP's statement that the NAC definition of "special mobile equipment" is more expansive than the definition of "nonroad engine" in 40 CFR 89.2 simply adds weight to EPA's concerns over the exclusion of "special mobile equipment" from the meaning of "stationary source." To the extent that the definition of "stationary source" in NAC 445B.187, by exempting "special mobile equipment," excludes internal combustion engines other than nonroad engines and those used for transportation purposes, the definition is unacceptable. See CAA section 302(z).

For instance, the term "nonroad engine" includes an internal combustion engine that, by itself or in or on a piece of equipment, is portable or transportable, except where such an engine remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. See 40 CFR 89.2. Where such an engine remains or will remain at a location for more than 12 consecutive months (or a shorter period of time for an engine located at a seasonal source), the engine should be included in the definition of "stationary source" under NAC 445B.187, but may be excluded in the current version of the definition by virtue of the exclusion for "special mobile equipment." For a detailed discussion of the applicability of new source review to internal combustion engines, see 61 FR 38250, at 38306–38307 (July 23, 1996).

2. General Provisions

Comment 12: In response to EPA's evaluation of NAC 445B.252 ("Testing and sampling"), NDEP agrees to propose a change in the rule to replace the term "method of reference" with "reference method."

Response 12: The proposed change in NAC 445B.252 (as shown in attachment A to NDEP's comment letter) would fix the minor deficiency in this rule identified by EPA on page 23 of the TSD.

3. Operating Permits Generally

Comment 13: In response to EPA's evaluation of NAC 445B.287 ("Operating permits: General requirements; exception; restriction on transfer"), NDEP agrees to submit a subsection cited, but not included, in the submitted version of the rule, but requests clarification from EPA as to why a title V provision, such as the cited subsection, should be in the applicable SIP.

Response 13: We did not recognize the missing subsection (i.e., subsection 2), which provides for an exemption from permit revision requirements for certain Class I sources, as a title V only provision, but believe that it needs to be submitted to allow for proper interpretation and application of the rule.

Comment 14: With respect to EPA's evaluation of NAC 445B.288 ("Operating permits: Exemptions from requirements; insignificant activities"), NDEP disagrees that the rule should be amended to exclude from exemption agricultural equipment which is subject to any standard set forth in 40 CFR part 63. With respect to emergency generator provisions, NDEP intends to propose amendments to the rule to extend the limitation on emergency generators that qualify as an "insignificant activity" from class II sources to all stationary sources.

Response 14: We view the absence of a limitation on the application of the exemption for agricultural equipment subject to any standard set forth in 40 CFR part 63 as a minor deficiency but continue to encourage NDEP to make the suggested change. With respect to emergency generators, we find that adoption of the amendment to NAC 445B.288, as shown in attachment A to NDEP's comment letter, would fully respond to EPA's findings with respect to that issue.

Comment 15: With respect to EPA's evaluation of NAC 445B.308 ("Prerequisites and conditions for issuance of operating permits: Environmental evaluation; compliance with control strategy; exemption from environmental evaluation"), NDEP indicates that the issue of multiple rule submittals has been resolved by supplemental material, entitled "Clean Copy of the December 8, 2006 ASIP Submittal," submitted on February 13, 2007 and re-submitted as a courtesy as attachment C to NDEP's comment letter. Second, NDEP asserts that the issue of director's discretion in subsection (3) of NAC 445B.308 is adequately addressed by the limits and criteria established in a separate rule, specifically NAC 445B.311(3), and intends to propose amendments to NAC 445B.308(3) to refer to the criteria in NAC 445B.311(3).

Response 15: We agree that NDEP resolved the potential for confusion arising from multiple rule submittals through submittal of the supplemental material on February 13, 2007. We also find that the draft amendment to NAC 445B.308, as shown in attachment A to NDEP's comment letter, would resolve the director's discretion issue.

Comment 16: With respect to EPA's evaluation of NAC 445B.311 ("Environmental evaluation: Required information"), NDEP notes that NAC 445B.083, which is cited in NAC 445B.311, is being submitted to EPA for action as a SIP revision. Second, NDEP attaches a commitment to obtain EPA's approval before authorizing the modification of a model in 40 CFR part 51, appendix W.

Response 16: We find that NDEP's submittal of NAC 445B.083, as shown in attachment B to NDEP's comment letter, resolves the issue of a hanging reference in NAC 445B.311. With respect to approval of modified or substitute models, we find that the submittal of a commitment by NDEP to obtain EPA's written approval (included as attachment D to NDEP's comment letter) fails to adequately resolve this deficiency. Any such commitment such as the one submitted by NDEP must be incorporated into the SIP, and as such, must be submitted to EPA as a SIP revision following the usual SIP

revision procedures, including notice and opportunity for public comment. More importantly, a separate commitment by NDEP does not ensure notice to permit applicants of this requirement and therefore may lead to disputes over source impacts and related control technology that could be avoided if the requirement were written into the rule. Therefore, we encourage NDEP to propose an amendment to NAC 445B.311 to require EPA written approval for use of a modified or substitute model and to re-submit the rule, as amended, to EPA for approval as part of the SIP.

Comment 17: With respect to EPA's evaluation of NAC 445B.313 ("Method for determining heat input: Class I sources"), NDEP intends to propose amendments to the rule to require the maximum heat input to be determined by combining the maximum fuel input rate and the total calorific value of the fuel or fuel(s) combusted. NDEP also intends to propose amendments to the rule to clarify that appropriate ASTM methods must be used for determining heat input.

Response 17: NDEP's amendments to NAC 445B.313, as shown in attachment A to NDEP's comment letter, would not resolve the deficiency identified by EPA. NDEP's amendments add the word "maximum" prior to "heat input" and then delete the references to 40 CFR parts 51, 52, 60, and 61. However, the amended rule still does not specify the appropriate method for determining heat input. As described on page 29 of our TSD, the appropriate method is as follows: the maximum heat input is determined by combining the maximum fuel rate, determined by the manufacturer, with the total calorific value of the fuel. ASTM methods are used to determine the calorific values of fuels.

Comment 18: With respect to EPA's evaluation of NAC 445B.326 ("Operating permits: Assertion of emergency as affirmative defense to action for noncompliance"), NDEP states that it seems obtuse that an emission limitation, established in an integrated construction/operating permit or an operating permit to construct, would be allowed to have an affirmative defense for an emergency under a title V operating permit but would not be allowed to have that same defense in a SIP-based permit that established the technology-based limitation to begin with.

Therefore, NDEP maintains that NAC 445B.326 is fully approvable as submitted.

Response 18: Normally, an air pollution control agency issues a preconstruction permit to a new source or modification, and the preconstruction permit will contain all of the technology-based emission limitations necessary for the source or modification to comply with the SIP. For certain sources, these SIP-based emission limitations are then included in title V operating permits. Noncompliance with such limitations can trigger either enforcement of the SIP requirements or the conditions of the title V permit.

NDEP's program, in contrast, is an integrated program combining both preconstruction and title V operating permit requirements. As noted on pages 31–32 of our TSD, submitted rule NAC 445B.326 is acceptable with respect to enforcement actions brought for noncompliance with title V operating permit conditions. If EPA were to approve it into the SIP, the affirmative defense as set forth in NAC 445B.326 would also apply to the underlying SIP requirements. However, in its current form, NAC 445B.326 does not provide the requisite protection for the NAAQS and PSD increments as called for under CAA section 110(a)(2).

For example, the affirmative defense in NAC 445B.326 does not distinguish between penalties and injunctive relief, and if adequately supported by a source, applies to both types of claims. EPA recognizes that, while imposition of penalties under certain circumstances may not be appropriate, SIPs must provide for attainment and maintenance of the NAAQS and protection of PSD increments, and thus, EPA cannot approve into the SIP a provision that would undermine that fundamental SIP purpose. Thus, for SIP approval, an acceptable affirmative defense provision can apply only to penalties, and not to injunctive relief. This restriction ensures that both state and federal authorities remain able to protect the NAAQS and PSD increments.

We have published guidance to advise States on the types of considerations that should be taken into account in developing a SIP rule providing an affirmative defense to excess emissions caused by malfunction. See EPA memorandum, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, et al, dated September 20, 1999.

Comment 19: With respect to EPA's evaluation of NAC 445B.331 ("Request for change of location of emission unit"), NDEP indicates that the provision applies to changes of location of an emission unit both within the confines of a stationary source and outside the confines of a stationary source. NDEP explains that NAC 445B.331 relates to temporary sources and that such sources must choose between two types of permits: A normal stationary source operating permit or a general operating permit. If the former is chosen, the normal permitting process occurs, and if the latter is chosen, the owner or operator must obtain a general operating permit and request to operate at the selected location within the constraints of the general operating permit. Either way, an environmental evaluation is performed to ensure compliance with the NAAQS. NDEP further explains that the request for approval of a specific location under NAC 445B.331 simply allows the NDEP to evaluate the owner or operator's proposal to ensure that the proposal complies with the terms and conditions of the general operating permit. Thus, NDEP believes that no changes in this provision are warranted.

Response 19: On page 32 of our TSD, we concluded that NAC 445B.331 must be amended to clarify that it only provides for changes in locations of emission units within the confines of existing sources at which the units are located. With NDEP's explanation summarized above, however, we now believe that NAC 445B.331 need not be so limited and that NDEP's approach to temporary sources is reasonable. Nonetheless, we conclude that amendments in NAC 445B.331 are still necessary to carry out the approach that NDEP describes in its comment letter because the rule, in its current form, does not cross-reference either the normal operating permit provisions or the general permit provisions. The purpose of such amendments would be to clarify that one or the other type of permit is required notwithstanding the ten-day advance notice provision in the rule.

4. Class I Operating Permits

Comment 20: With respect to EPA's evaluation of NAC 445B.3363 ("Operating permit to construct: Application"), NDEP indicates that the issue of multiple rule submittals has been resolved by supplemental material, entitled "Clean Copy of the December 8, 2006 ASIP Submittal," submitted on February 13, 2007 and re-submitted as a courtesy as attachment C to NDEP's comment letter.

Response 20: We agree that NDEP resolved the potential for confusion arising from multiple rule submittals through submittal of the supplemental material on February 13, 2007.

Comment 21: With respect to EPA's evaluation of NAC 445B.33637 ("Operating permit to construct for approval of plantwide applicability limitation: Application"), NDEP disagrees with EPA's observation that NAC 445B.33637(1)(e) is missing text between the words "limitation" and "based."

Response 21: NDEP's explanation is satisfactory, and we no longer believe that any text is missing in NAC 445B.33637(1)(e).

Comment 22: With respect to EPA's evaluation of NAC 445B.3364 ("Operating permit to construct: Review of application and determination of completeness by director; notice"), NDEP indicates that the issue of multiple rule submittals has been resolved by supplemental material, entitled "Clean Copy of the December 8, 2006 ASIP Submittal," submitted on February 13, 2007 and re-submitted as a courtesy as attachment C to NDEP's comment letter. Second, NDEP intends to amend NAC 445B.3364, as well as NAC 445B.3395, to provide notice specifically to Clark and Washoe Counties for construction or modification of sources affecting those counties. Third, NDEP requests clarification with respect to federal requirements for public notice regarding lead.

Response 22: First, we agree that NDEP resolved the potential for confusion arising from multiple rule submittals through submittal of the supplemental material on February 13, 2007.

Second, we find that the amendments in NAC 445B.3364 and NAC 445B.3395 shown in attachment A to NDEP's comment letter address the issue of providing notice to county APCDs but, for the purpose of clarity, we recommend that the word "any" be substituted for the word "each" in the draft amendment to NAC 445B.3364(6)(e) and that the word "affected" be added immediately before the term "local air pollution control agency" in the draft amendment to NAC 445B.3395(7)(b)(2).

Third, with respect to lead ("Pb"), the federal requirements for public notice regarding lead in 40 CFR 51.161(d) can be explained by examining EPA rulemaking actions that culminated in the language now found in 40 CFR 51.161(d). These actions include EPA's proposed restructuring of the requirements for SIPs in 40 CFR part 51 at 48 FR 46152 (October 11, 1983) and corresponding final rule at 51 FR 40656 (November 7, 1986). As described in our 1983 proposal, one of the goals for restructuring was to reduce reporting requirements. To further this goal, we proposed to limit the requirement on States to notify EPA of all air permitting actions to cover only major sources in nonattainment areas and, with respect to pollutants for which no area designations are established (such as Pb at the time), all point sources.[4] Ultimately, EPA decided not to limit the reporting requirement but to retain the pre-existing requirement on States to notify EPA of all permitting actions, except for Pb. See 51 FR 40656, at 40658 (November 7, 1986). For new or modified sources of Pb, EPA finalized the proposed "point source" threshold for notification to EPA of proposed permits.

Thus, since the point source threshold for Pb is 5 tons per year in 40 CFR 51.100(k)(2), the reporting requirement in 40 CFR 51.161(d), as it relates to Pb emissions, attaches to new sources of Pb with potential to emit 5 tons per year or more and to any modifications of such sources that increase Pb emissions. The use of the term "actual emissions" in the definition of "point source" in 40 CFR 51.100(k)(2) is not inconsistent with our interpretation above because, in the NSR context, for a source not yet constructed, "actual emissions" equal the PTE. See 40 CFR 51.166(b)(21)(iv).

Comment 23: With respect to EPA's evaluation of NAC 445B.3366 ("Operating permit to construct: Expiration; extension"), NDEP agrees that a definition of "commence" and related definitions should be added to its rulebook.

Response 23: We have reviewed the definitions of "commence," "necessary preconstruction approvals or permits," and "begin actual construction" as shown in attachment A to NDEP's comment letter. We find the definitions of "commence" and "begin actual construction" to be essentially the same as the corresponding definitions in 40 CFR 51.166(b) and to be acceptable. NDEP's draft definition of "necessary preconstruction approvals or permits" substitutes "pursuant to NAC 445B.001 to 445B.3689, inclusive," for "under Federal air quality control laws and regulations" as set forth in 40 CFR 51.166(b)(10). We will not approve a deviation from the Federal definition of the same NSR term unless the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects as the corresponding Federal definition. See 40 CFR 51.166(b).

5. Class II Operating Permits

Comment 24: With respect to EPA's evaluation of NAC 445B.3457 ("Application: Determination of completeness by director"), NDEP asserts that EPA was incorrect in concluding that the same prescriptive requirements in 40 CFR 51.160(e) also exist in 40 CFR 51.161(a) and disagrees that "well-defined objective criteria" are required to meet the State's obligations for public notice under 40 CFR 51.161. NDEP asserts that implementation of a one-size-fits-all de minimis emissions approach would be more susceptible to an assertion of being arbitrary and capricious, would unduly limit the NDEP's ability to notify the public in a manner that is best suited for Nevada, would be inconsistent with the State/EPA partnership Congress intended under the CAA, and would prohibit public notice for sources with emissions less than de minimis levels.

Also, NDEP asserts that EPA has made conflicting statements with respect to acceptable public notice requirements. On one hand, EPA indicates, without proper support, that the submitted rules would weaken the existing SIP with respect to permitting of all sources except class I sources. On the other hand, EPA goes on to say that States may exempt from review changes that are not environmentally significant implying that the SIP can be weakened in this respect.

Lastly, NDEP points the EPA to Congress' intent in CAA section 101(a)(3) that States are obligated and responsible for the creation and implementation of air pollution prevention and control at sources. The EPA is required to provide technical and financial assistance to States in connection with the development and execution of their air pollution prevention and control programs.

Response 24: First, we do not interpret our regulations so as to apply the same prescriptive requirements found in 40 CFR 51.160(e) to 40 CFR 51.161(a). The former requires States or local agencies to identify types and sizes of facilities, buildings, structures, or installations which will be required to apply for a permit for a new source or modification and discuss the basis for determining which facilities will be subject to review. The latter requires the State or local agency to provide the opportunity for public comment on information provided by permit applicants and on the agency's related analysis and proposed action on the permit application.

[4] The 1983 proposal incorrectly used the term "major source" in connection with the notice requirement for new or modified sources of pollutants for which no designations are established. As explained in our 1986 final rule, EPA intended the term "point source." See at 51 FR 40656, at 40659 (November 7, 1986).

Under 40 CFR 51.161(a), and unlike 40 CFR 51.160(e), the State or local agency is not required to identify types of permit applications that will be subject to review nor discuss the basis for that decision. Rather, the public review requirements apply to each and every permit action proposed by the State or local agency. However, if the State or local agency chooses to exempt some new sources or modifications subject to permitting from public participation requirements, it must do so consistent with the *de minimis* principle set forth in *Ala. Power Co.* v. *Costle*, 636 F.2d 323, at 360–361 (D.C.Cir. 1979)[5] and by application of well-defined objective criteria. NDEP's current approach fails the *de minimis* principle by foregoing public notice for sources up to 100 tons per year and substitutes Director's discretion for well-defined objective criteria.

On page 49 of our TSD, we indicate that we believe that a State may tailor the public participation process for less environmentally significant sources and modifications and note that NDEP could limit mandatory public notice to a subset of Class II sources based on *de minimis* thresholds and allow for Director's discretion to require public notice below those thresholds.[6] Our objection to NDEP's current approach is the use of 100 tons per year as the threshold above which public notice is mandatory given that NDEP has provided no demonstration that 100 tons per year represents an acceptable *de minimis* level below which the burden of public notice on sources yields a gain of trivial or no value. NDEP might consider lowering the mandatory public process thresholds from 100 tons per year to the thresholds used in connection with environmental evaluations. We believe that NDEP, for instance, might be able to demonstrate that the thresholds triggering preparation of environmental evaluations are appropriate thresholds for mandatory public notice consistent with the *de minimis* principle.

Second, NDEP indicates that EPA has not justified the conclusion that the public participation requirements for class II sources (which are found in NAC 445B.3457) weaken the existing SIP. The basis for our conclusion is a comparison of NAC 445B.3457 with the corresponding rule in the existing SIP. The existing SIP rule, NAC 445.707 [subsection (3)] is cited on page 37 of our TSD in connection with our review of NAC 445B.3457. NAC 445.707 [subsection (3)] requires the director to give preliminary notice of his intent to issue or deny a "registration certificate" for a single source within 15 days after receiving adequate information for reviewing the registration application. This obligation on the director attaches to all applications for "registration certificates" (which are now referred to as permits).

In connection with our review of NAC 445B.3457, we should also have cited existing SIP NAC 445.707[subsections (4) and (5)], which require the application, the director's review and preliminary intent to issue or deny a registration certificate to be made public, provides for a 30-day comment period, and requires the director to take into account written public comments, among other requirements. Once again, the public notice and 30-day comment period requirements attach to all applications. Thus, the submitted approach that limits mandatory public notice and comment to sources greater than 100 tons per year clearly weakens the SIP relative to public participation for permitting of new sources and modifications. Our conclusion in this regard does not imply that no relaxation from the existing SIP can be approved. Rather, we indicate in our TSD that we believe that exemptions from the public notice and comment can be approved so long as such exemptions are supported under the *de minimis* principle discussed above.

Lastly, with respect to the State/EPA partnership established by Congress through the CAA, we recognize that air pollution prevention and air pollution control at its source is the primary responsibility of States and local governments. We are also cognizant of EPA's responsibility under the CAA to ensure that each State adopt and submit a plan which provides for implementation, maintenance, and enforcement of the NAAQS. EPA fulfills this responsibility in part by approving or disapproving SIPs and SIP revisions submitted under CAA section 110 for compliance with the CAA and EPA's SIP rules in 40 CFR part 51. Our review and action on the State's submittal of its stationary source permitting program, including the provisions related to public notice, comport with our responsibilities under the CAA.

Comment 25: With respect to EPA's evaluation of NAC 445B.3477 ("Class II general permit"), NDEP notes that, under Nevada's regulations, a "general permit" is a type of operating permit (one issued by the Director to cover numerous similar stationary sources) and that requirements for a general permit and the criteria by which sources may qualify for a general permit are found in the general permit. Second, NDEP agrees to propose amendments to NAC 445B.3477 to add public participation requirements.

Response 25: On page 38 of our TSD, we indicated that NAC 445B.3477 must identify the requirements for general permits, the public participation requirements for issuing such permits, and the criteria by which stationary sources may qualify for such a permit. Based on NDEP's explanation, we now recognize the "general permit" as a type of operating permit (under NAC 445B.082) that, as such, is subject to the requirements that apply generally to Class II operating permits. We now also understand that NDEP performs a worst-case environmental evaluation to ensure that the terms and conditions of the general operating permit will ensure compliance with the NAAQS and are consistent with the Class II operating permit requirements (see page 5 of NDEP's comment letter), has traditionally provided for public notice of general permits (although not required to do so by the terms of the rule), and has recently drafted revisions to NAC 445B.3477 to require such public notice in the future. We have reviewed the draft public notice provisions that have been added to NAC 445B.3477 (as shown in attachment A to NDEP's letter) and find them acceptable.

Thus, we find that our objections to NAC 445B.3477 have been satisfactorily

[5] While the *Alabama Power* court discusses the *de minimis* principle in the context of a Federal administrative agency's authority in promulgating rules to satisfy statutory requirements, the same principle can be applied where a State promulgates rules to satisfy requirements by a Federal administrative agency. With regards to the *de minimis* principle, the Alabama Court writes: "Determination of when matters are truly *de minimis* naturally will turn on the assessment of particular circumstances, and the agency will bear the burden of making the required showing. But we think most regulatory statutes, including the Clean Air Act, permit such agency showings in appropriate cases. While the difference is one of degree, the difference of degree is an important one. Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For such a situation any implied authority to make cost-benefit decisions must be based not on a general doctrine but on a fair reading of the specific statute, its aims and legislative history." See Ala. Power Co. v. *Costle*, 636 F.2d 323, at 360–361 (D.C. Cir. 1979).

[6] Thus, with respect to the circumstances described by NDEP involving a very small medical waste pyrolysis facility, EPA does not mean to imply that, by establishing *de minimis* thresholds for mandatory public notice, a State should limit its discretion to require public notice for sources below such thresholds. To the contrary, below such thresholds, we believe it to be appropriate that a State retain authority to require public notice in light of special or unusual circumstances.

resolved except for the environmental evaluation requirement, which has been performed in practice, but is not required by the terms of the rule as a prerequisite to issuing a Class II general permit. The environmental evaluation is the tool by which NDEP determines whether new or modified sources would result in a violation of the NAAQS but is not required for all Class II permits; thus, NAC 445B.3477 must be amended to clearly require environmental evaluations for all class II general permits. We also suggest clarifying that general permits are a specific type of Class II permit.

6. Other Issues

Comment 26: With respect to EPA's suggestion to add the phrase "as incorporated by reference" to a number of rules to be consistent with the use of that phrase in other rules, NDEP plans to review the use of the phrase throughout chapter 445B of the NAC for consistency and amend as appropriate.

Response 26: This is acceptable. As noted on page 53 of the TSD, we view this issue as one for which clarification is warranted but not as one that affects approvability of the submittal.

D. Rescissions of Permitting-Related Rules From Applicable SIP

Comment 27: NDEP agrees with our proposal to disapprove certain rescissions, and to approve certain other rescissions, of permit-related provisions in the existing SIP. NDEP also provides additional background information supporting our proposed approval of the rescission request for NAQR article 13.1.3(3), and identifies public process documentation for rescission of NAQR article 13.1.3(3) and NAC 445.706(2) in previously-submitted materials.

Response 27: In today's action, we are finalizing our disapproval of the rescissions of NAQR article 1.60 ("Effective date"), NAQR article 1.72 ("Existing facility"), and NAC 445.715 ("Operating permits: revocation") from the applicable SIP. We are disapproving the rescissions of these three provisions because, as described on pages 55–59 of the TSD, the provisions are relied upon by other rules that remain in the applicable SIP. NAQR article 1.72 and NAC 445.715 may be rescinded at such time as we act to approve the rules comprising the overall stationary source permitting program.

We are also finalizing our approval of the rescissions of NAQR article 13.1.3(3) [Minor source BACT] and NAC 445.706(2) ("Application date: payment of fees") from the applicable SIP. Our rationale for approving the rescission of these two provisions is provided on pages 56–58 of the TSD. In short, we are approving the rescission of NAC article 13.1.3(3) because controls representing "best available control technology" (BACT) are not required for minor sources and minor modifications, rescission of the minor source BACT requirement would not have a retroactive effect, rescission would only affect a subset (not all) of new minor sources, and we find no evidence that NDEP is relying on the BACT requirement in article 13.1.3(3) to maintain the NAAQS in any area. We are approving the rescission of NAC 445.706(2) because permit fee rules are no longer a SIP requirement in areas, such as those under NDEP jurisdiction, that have an approved title V program.

We do not agree with NDEP that a review of regulatory history clearly shows that the State's intent in adopting the BACT requirement in NAQR article 13.1.3(3) was to apply BACT only to PSD major sources and major modifications. Our review indicates that the State intended to apply BACT to the same types of sources and modifications in attainment areas as were subject to a control technology representing the lowest achievable emissions rate (LAER) in nonattainment areas. Thus, since LAER was triggered at 100 tons per year in nonattainment areas (for nonattainment pollutants), the State intended that BACT be triggered at 100 tons per year in attainment areas, thereby extending the applicability of BACT beyond that required under PSD (except for certain source categories for which a 100 ton per year threshold applies under PSD). Notwithstanding our disagreement with NDEP regarding the State's intent in adopting the BACT requirement, we are finalizing the rescission of the requirement from the applicable Nevada SIP for the reasons set forth in our TSD and summarized above.

In our proposed rule, we indicated that our approval of the rescissions of these two provisions was contingent upon receipt of public notice and hearing documentation from the State. See 73 FR 19144 (April 17, 2007). In response, NDEP has identified the relevant public process documentation in materials previously-submitted to EPA. Specifically, NDEP shows that NAQR article 13.1.3(3), later re-codified as NAC 445.708(2)(c), was repealed by the State Environmental Commission (SEC) on August 29, 1990, and that NAC 445.706(2) was repealed by the SEC on November 3, 1993. Documentation for both actions, and related public process, is found in NDEP's SIP revision submittal dated February 16, 2005. Upon review of the public process documentation identified by the State, we find that the State has met the contingency placed by us on the proposed approval of the requested rescissions of these two provisions from the applicable SIP.

IV. EPA Action

In its comment letter dated August 17, 2007, NDEP explains how it intends to remedy many of the deficiencies in the State's rules that govern application for, and issuance of, permits to stationary sources and that EPA identified in the April 17, 2007 proposed rule, but several important deficiencies, such as insufficient public notice, remain unresolved. Therefore, pursuant to CAA section 110(k)(3), we are finalizing our action as proposed on April 17, 2007 with the exception that, for a small subset of rules, our final action relates to amended rules submitted by NDEP on August 20, 2007 rather than the versions of the corresponding rules submitted earlier and included in our April 17, 2007 proposal (see Table 4, above).

Therefore, for the reasons set forth in our proposed rule and TSD, as clarified in the responses to comments in this document, we are taking final action to approve certain revisions to the Nevada SIP and to disapprove certain other revisions. With respect to approvals, we are taking final action to approve NAC 445.22083 ("Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels") and NAC 445B.250 ("Notification of Director: Construction, reconstruction and initial start-up; demonstration of continuous monitoring system performance"), as re-submitted on August 20, 2007, and NAC 445B.252 ("Testing and sampling"), as submitted on January 12, 2006.[7] We are also approving the rescission from the applicable SIP of NAQR article 13, subsection 13.1.3(3), i.e., the minor source BACT requirement, and NAC 445.706(2), which relates to payment of fees.

With respect to disapprovals, we are taking final action to disapprove four submitted rules evaluated separately from the bulk of the permitting program (see table 1, above); all of the submitted rules that comprise NDEP's stationary source permitting program (see tables 2 and 4, above); the two statutory

[7] Final approval of these rules supersedes the following rules in the applicable SIP (superseding rules shown in parentheses) upon the established compliance date for any new or amended requirements in the superseding rules: NAC 445B.22083, as submitted on November 30, 2003 (NAC 445B.22083); NAQR article 2.16.1 (NAC 445B.250); and NAC 445.682 (NAC 445B.252).

provisions listed in table 4; and the rescissions of three existing SIP rules as listed in table 3, above. Our disapproval of these submitted rules, statutory provisions, and rescissions does not trigger sanctions under CAA section 179 and 40 CFR 52.31 because the State of Nevada has an approved stationary source permitting program in the applicable SIP and is not required under the Clean Air Act to submit its updated stationary source permitting program to EPA for approval.[8]

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making our approval of two rules (i.e., NAC 445B.22083 and NAC 445B.250) and our disapproval of the other rules submitted by NDEP on August 20, 2007 (see table 4, above) final without prior proposal and opportunity for comment because the rules are in substance the same as those that they supersede and for which public notice and comment was provided in our April 17, 2007 proposed rule. Good cause also exists for final disapproval of the two statutory provisions submitted on August 20, 2007 without prior proposal and opportunity for comment because both were adequately described in the April 17, 2007 proposed rule and clearly related to the overall program for which we proposed disapproval and for which we are taking final action to disapprove in this document. Thus, notice and public procedure for our action on the statutory provisions and amended rules contained in NDEP's August 20, 2007 SIP submittal are unnecessary.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves or disapproves state law as meeting Federal requirements and imposes no additional requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves or disapproves state law and does not impose any additional enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves or disapproves state law implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA(s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 20, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraphs (c)(18)(i)(A), (c)(25)(vi), (c)(56)(i)(A)(*9*), and (c)(67) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(18) * * *

(i) * * *

(A) Previously approved on April 14, 1981 in paragraph (c)(18)(i) of this

[8] In this context, we are referring to NDEP's program for issuing pre-construction permits for all new sources and modifications other than those for which part C (i.e., PSD) or part D (i.e., Nonattainment NSR) of title I of the CAA apply.

section and now deleted without replacement: Nevada Air Quality Regulations (NAQR) article 13.1.3(3).

* * * * *

(25) * * *

(vi) Previously approved on March 27, 1984, in paragraph (c)(25)(i)(A) of this section and now deleted without replacement: Nevada Administrative Code (NAC) section 445.706(2).

* * * * *

(56) * * *

(i) * * *

(A) * * *

(*9*) The following sections of Chapter 445B of the Nevada Administrative Code were adopted on the dates listed in paragraph (c)(56)(i)(A)(*9*) of this section:

(*i*) September 18, 2003: 445B.252.

* * * * *

(67) New or amended regulations were submitted on August 20, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(*1*) Nevada Administrative Code (January 2007 codification by the Legislative Counsel Bureau) section 445B.22083, "Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels;" and section 445B.250, "Notification of Director: Construction, reconstruction and initial start-up; demonstration of continuous monitoring system performance;" adopted by the State Environmental Commission on October 4, 2005.

* * * * *

[FR Doc. E8–8139 Filed 4–15–08; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2008–0003]

RIN 1660–AA59

Disaster Assistance; Change in Federal Share for Alternate Projects for Public Facilities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This final rule makes a conforming amendment to the Federal Emergency Management Agency's (FEMA) Public Assistance regulations to reflect two changes to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) made by the Security and Accountability For Every Port Act of 2006 (the SAFE Port Act). The first change amends the percentage of the Federal contribution for alternate projects from 75 percent to 90 percent of the Federal share of the Federal estimate of eligible costs for public facilities. The second change removes language that provided for Federal funding of 90 percent of the Federal share of the approved Federal estimate of eligible costs for alternate projects in areas with unstable soil. These changes are technical and conforming amendments that revise FEMA's regulations to conform with amendments to the Stafford Act. FEMA is exercising no discretion in implementing these changes.

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

FOR FURTHER INFORMATION CONTACT: James A. Walke, Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Room 601, Washington, DC 20472, (phone) 202–646–2751; (facsimile) 202–646–3304; or (e-mail) *James.Walke@dhs.gov*.

SUPPLEMENTARY INFORMATION: Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), Public Law 93–288, as amended, 42 U.S.C. 5121–5207, the Federal Emergency Management Agency (FEMA) provides funding to State or local governments or private nonprofit organizations (PNPs) to repair, restore, reconstruct or replace public facilities owned or controlled by the State or local government or PNP. If, however, the State or local government or PNP determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the public facility, it may elect to receive a contribution to use for alternate projects. Any alternate project must either be "to repair, restore, or expand other selected public facilities; to construct new facilities; or to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster." (42 U.S.C. 5172(c)(1); 44 CFR 206.203(d)(2)).

Section 609 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, October 13, 2006, amended section 406(c)(1) of the Stafford Act by changing the Federal contribution for alternate projects for State and local government applicants from "75 percent of the Federal share" of the eligible costs for public facilities to "90 percent of the Federal share" of the eligible costs for public facilities. Accordingly FEMA is revising 44 CFR 206.203(d)(2)(ii) to reflect this statutorily mandated percent share increase for public facilities.

Because Congress made this change for public facilities, but made no change to the 75 percent contribution for private nonprofit applicants' alternate projects, FEMA is adding a new paragraph to separately address the Federal contribution for private nonprofit facilities, which remains at 75 percent.

Section 609 of the SAFE Port Act also struck former section 406(B) of the Stafford Act, which provided for Federal funding of 90 percent of the Federal share of the approved Federal estimate of eligible costs of alternate projects in areas with unstable soil. Because Congress removed this authority from the Stafford Act and because FEMA will already be providing funding of 90 percent of the Federal share of the approved Federal estimate to State and local governments regardless of the stability of the soil through its change to 44 CFR 206.203(d)(2)(ii), FEMA is removing the regulation that implemented section 406(B) at 44 CFR 206.203(d)(2)(iii).

Administrative Procedure Act

Under the Administrative Procedure Act (APA), a notice of a proposed rulemaking is not necessary to revise a regulation if the agency finds for good cause that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b)(3)(B). This rulemaking conforms with the good cause exemption under section 553(b)(B) of the APA because notice and comment is unnecessary and impractical. Public comments would serve no useful purpose, as the revision to the regulation is mandated by the change to FEMA's statutory authority, and FEMA has no discretion to alter this statutory mandate. For these reasons, FEMA also finds that it has good cause not to delay the effective date of this rule under 5 U.S.C. 553(d)(3).

Executive Order 12866, as Amended, Regulatory Planning and Review

FEMA has prepared and reviewed this rulemaking under the provisions of Executive Order 12866, 58 FR 51735, Oct. 4, 1993, and as amended. Under Executive Order 12866, a significant regulatory action is subject to the Office

of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule is not a significant regulatory action. This regulation will revise FEMA's regulations to conform to changes Congress made in the agency's authorizing statute. Before Congress revised the contribution amount for alternate projects from 75 percent to 90 percent of the Federal share of the eligible costs for public facilities, FEMA provided on average $520,000 per year in contributions for alternate projects. Although the change to the Stafford Act and the change to FEMA's regulations by this rule will only affect the contribution amount for public facilities, this figure includes funds for public facilities as well as private nonprofit facilities, as independent data is unavailable. This regulatory change is expected, therefore, to increase that figure by 15 percent (75 to 90), which is $78,000. Therefore the average amount of FEMA's contribution toward alternate projects would rise from $520,000 to $598,000 per year.

There is no effect on the economy by the removal of the language providing for Federal funding of 90 percent of the Federal share of the approved Federal estimate of eligible costs of alternate projects in areas with unstable soil. Since FEMA will already be providing funding of 90 percent of the Federal share of the approved Federal estimate regardless of the stability of the soil, those projects that have unstable soil will see no difference.

This rule is not a "significant regulatory action" under Executive Order 12866; therefore, OMB has not reviewed it under that Order. The annual effect of this rule on the economy is approximately $78,000. FEMA knows of no other conditions that would qualify this final rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") mandates that an agency conduct an RFA analysis when an agency is "required by section 553 * * * to publish general notice of proposed rulemaking for any proposed rule * * *." 5 U.S.C. 603(a). Accordingly, RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

Unfunded Mandates Reform Act of 1995

FEMA has not issued a notice of proposed rulemaking for this regulatory action; therefore, the provisions of the Unfunded Mandates Reform Act of 1995, as amended, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, do not apply to this regulatory action.

Paperwork Reduction Act of 1995

This rulemaking contains no new collection of information, or revision to an existing collection of information, as defined by the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520.

National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321, 4331–4335, 4344, and 4365, an agency must prepare an environmental assessment and environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement. The rulemaking pertains to the repair, restoration, reconstruction, or replacement of a public facility. These actions are categorically excluded from the preparation of environmental impact statements and environmental assessments pursuant to 44 CFR 10.8(d)(2)(xv), pertaining to the repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any facility in a manner that substantially conforms to the preexisting design, function, and location. Under 44 CFR 10.8(d)(2)(ii), the preparation, revision, and adoption of regulations related to actions that qualify for categorical exclusions are also excluded from the preparation of environmental impact statements and environmental assessments. Since this rulemaking pertains to actions that qualify for a categorical exclusion, FEMA is not required to prepare an environmental assessment or environmental impact statement.

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, that is, 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." Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has reviewed this final rule under Executive Order 13132 and because this rule merely implements a statutory change in the percentage of public assistance funding that can be provided for alternate projects, FEMA has determined that this rule does not have federalism implications as defined by the Executive Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, November 9, 2000, applies to agency regulations that have tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs

incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government, or the agency consults with tribal officials.

This rule implements a statutory change in the percentage of Public Assistance funding that can be provided for alternate projects. This rulemaking will 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.

Executive Order 12898, Environmental Justice

Pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency 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 in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

This rulemaking will not have a disproportionately high or adverse effect on minorities or low-income populations.

Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders. FEMA has sent this rule to the Congress and to GAO pursuant to the CRA.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, FEMA amends part 206 of title 44 of the Code of Federal Regulations as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Revise paragraphs (d)(2)(ii) and (d)(2)(iii) of § 206.203 to read as follows:

§ 206.203 Federal grant assistance.

* * * * *

(d) * * *

(2) * * *

(ii) Federal funding for alternate projects for damaged public facilities will be 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iii) Federal funding for alternate projects for damaged private nonprofit facilities will be 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

* * * * *

Dated: April 10, 2008.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–8186 Filed 4–15–08; 8:45 am]

BILLING CODE 9110–10–P

Proposed Rules

Federal Register
Vol. 73, No. 74
Wednesday, April 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.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2008–09]

RIN 3069–AB35

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its Affordable Housing Program (AHP) regulation to authorize the Federal Home Loan Banks (Banks) to establish AHP homeownership set-aside programs for the purpose of refinancing or restructuring eligible households' nontraditional or subprime owner-occupied mortgage loans. The new authority would expire on June 30, 2011.

DATES: The Finance Board will accept written comments on this proposed rule that are received on or before June 16, 2008.

ADDRESSES: Submit comments by any of the following methods:

E-mail: comments@fhfb.gov.

Fax: 202–408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, *ATTENTION:* Public Comments.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at *comments@fhfb.gov* to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Rule: Affordable Housing Program Amendments. RIN Number 3069–AB35. Docket Number 2008–09.

We will post all public comments we receive on this rule without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at: *http://www.fhfb.gov/Default.aspx?Page=93&Top=93.*

FOR FURTHER INFORMATION CONTACT: Karen Walter, Associate Director, Office of Supervision, by electronic mail at *walterk@fhfb.gov* or by telephone at 202–408–2829; Charles E. McLean, Associate Director, Office of Supervision, by electronic mail at *mcleanc@fhfb.gov* or by telephone at 202–408–2537; Melissa L. Allen, Senior Program Analyst, Office of Supervision, by electronic mail at *allenm@fhfb.gov* or by telephone at 202–408–2524; or Sharon B. Like, Senior Attorney-Advisor, Office of General Counsel, by electronic mail at *likes@fhfb.gov* or by telephone at 202–408–2930. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

Section 10(j) of the Federal Home Loan Bank Act (Bank Act) requires each Bank to establish an affordable housing program, the purpose of which is to enable a Bank's members to finance homeownership by households with incomes at or below 80 percent of the area median income (low- or moderate-income households), and to finance the purchase, construction or rehabilitation of rental projects in which at least 20 percent of the units will be occupied by and affordable for households earning 50 percent or less of the area median income (very low-income households). See 12 U.S.C. 1430(j)(1) and (2). The Bank Act requires each Bank to contribute 10 percent of its previous year's net earnings to its AHP annually, subject to a minimum annual combined contribution by the 12 Banks of $100 million. See 12 U.S.C. 1430(j)(5)(C).

The Finance Board has promulgated a regulation implementing these provisions of the Bank Act, which is codified at 12 CFR part 951. The AHP regulation requires that each Bank establish a competitive application program under which the Bank's members may apply for AHP subsidies pursuant to eligibility requirements and scoring criteria set forth in the regulation and implemented through Bank policies. See 12 CFR 951.5. In addition, the AHP regulation authorizes a Bank, in its discretion, to set aside a portion of its annual required AHP contribution to establish homeownership set-aside programs for the purpose of promoting homeownership for low-or moderate-income households. See 12 CFR 951.6. Under the homeownership set-aside programs, AHP direct subsidy (grants) may be provided to members to pay for down payment assistance, closing costs, and counseling costs in connection with a household's purchase of its primary residence, and for rehabilitation assistance in connection with a household's rehabilitation of an owner-occupied residence. See 12 CFR 951.6(c)(4). The Finance Board periodically has increased the Banks' maximum allowable homeownership set-aside allocation. Currently, as established in amendments to the AHP regulation effective January 1, 2007, a Bank may allocate up to the greater of $4.5 million or 35 percent of its annual required AHP contribution to homeownership set-aside programs in that year, provided that at least one-third of the Bank's annual set-aside allocation is targeted to first-time homebuyers. See 12 CFR 951.2(b)(2).

From 1990 to 2007, the Banks awarded approximately $3.27 billion in AHP subsidy under both the competitive application and homeownership set-aside programs. The Banks awarded $2.97 billion of this amount through the competitive application program, assisting more than 556,000 units of owner-occupied and rental housing. The Banks' homeownership set-aside programs have provided more than $297 million to assist households, most of which were first-time homebuyers, to purchase and rehabilitate 67,103 owner-occupied units. In 2007, the Banks awarded AHP subsidy through their homeownership set-aside programs to over 9,200 low- or moderate-income households to purchase or rehabilitate their primary residences.

B. Subprime Mortgage Crisis

Current distress in the owner-occupied housing market has made it difficult for many low- and moderate-income households to sustain homeownership, particularly those with homes financed with subprime

adjustable-rate mortgages (ARMs) or nontraditional mortgage products. For these households, the interest rates on their subprime ARMs or the principal and interest payments on their nontraditional mortgages have increased substantially or will do so in the near future.[1] About 1.5 million subprime ARMs are scheduled to reset upward in 2008.[2] After these mortgages reset, many low- and moderate-income households will experience an unaffordable increase in their mortgage payments. Many of these low- and moderate-income households are not able to sustain homeownership without a reduction in their monthly mortgage payments. Many of these households also cannot sell their homes or refinance into more affordable mortgages because declines in home values have left them without sufficient equity to qualify for new mortgages. The resulting payment shocks, high housing-cost-to-income ratios, and the inability to refinance have already led, and will likely continue to lead, to foreclosures in many cases. More than 20 percent of the roughly 3.6 million subprime ARMs outstanding at the end of 2007 either were in foreclosure or 90 days or more past due.[3]

The problem is compounded by the fact that subprime and nontraditional mortgages are often concentrated geographically.[4] Experts believe that a higher than average number of foreclosures and unoccupied homes in a community adversely affect the home values and quality of life of other homeowners in the same neighborhood. In a March 2008 speech, the Chairman of the Federal Reserve Board stated that one in five outstanding subprime ARMs is seriously delinquent and that clusters of foreclosures may destabilize neighborhoods.[5] The same conclusion was reached by a Homeownership Preservation Foundation study, coauthored by former Federal Housing Administration (FHA) Commissioner William C. Apgar[6] and by the Federal Reserve Bank of Chicago,[7] which found that boarded-up houses and empty lots can decrease the values of homes in the same vicinity. The Center for Responsible Lending has estimated that the values of millions of homes not financed with subprime or nontraditional loans will be adversely affected by foreclosures resulting from subprime and nontraditional mortgages that are no longer affordable.[8]

C. Bank Actions To Address Crisis

A number of the Banks have instituted special Community Investment Program (CIP) advances to provide member banks and thrifts with lower-cost funds to refinance households into long-term, fixed-rate mortgages under existing statutory and regulatory authority. See 12 U.S.C. 1430(i); 12 CFR part 952. The Banks offer CIP advances at their cost of funds with either a small or no mark-up for administrative costs, and thus provide members with a way to fund long-term, fixed-rate mortgages at a somewhat lower cost than regular advances or other sources of funds. However, to date, member demand for these CIP advances has been limited, largely due to the fact that households that need to refinance often have difficulty qualifying for a new mortgage when their homes are devalued or their housing debt ratios are high.

The Finance Board is considering other options for how the Banks could assist households faced with unaffordable mortgage payments due to interest-rate increases or payment recasts in their subprime and nontraditional mortgages. Specifically, pursuant to a request by the Federal Home Loan Bank of San Francisco (San Francisco Bank) on January 15, 2008, the Finance Board, through Resolution Number 2008–01, approved waivers of certain homeownership set-aside program provisions of the AHP regulation to allow the San Francisco Bank to establish a temporary pilot program to provide AHP direct subsidy to enable a household with a subprime or nontraditional loan held by a San Francisco Bank member to refinance or restructure that loan into an affordable, long-term fixed-rate mortgage. The purpose of the pilot program is to provide households with stable mortgage payments for the life of the mortgage. Members receiving AHP subsidy must refinance or restructure existing mortgages so the resulting mortgages are fixed-rate, fully amortizing first mortgages with a term of at least 30 years. Members also must match the amount of AHP direct subsidy to each household on a two-to-one basis. The authority will expire on December 31, 2009. The Bank's submission raised a legal issue as to the permissible uses of AHP subsidy under the Bank Act; *i.e.*, whether the subsidy could be used to pay costs associated with the refinancing or restructuring of an existing mortgage loan to an otherwise AHP-eligible household. The legal issue is discussed in the Legal Authority section below.

D. Legal Authority

Section 10(j) of the Bank Act requires each Bank to establish, pursuant to Finance Board regulations, an affordable housing program to subsidize the interest rates on advances to members engaged in lending for long-term low- or moderate-income owner-occupied and affordable rental housing at subsidized interest rates. The Bank Act further provides that Finance Board regulations must permit Bank members to use AHP advances to: (A) Finance homeownership by families with incomes at or below 80 percent of the median income for the area; or (B) finance the purchase, construction, or rehabilitation of rental housing in which at least 20 percent of the units are for and occupied by households with incomes at or below 50 percent of the median income for the area. 12 U.S.C. 1430(j)(1) and (2). When Congress first enacted these provisions, the accompanying Conference Committee Report[9] included language regarding

[1] Subprime ARMs include, for example, "2/28" and "3/27" loans, in which the household pays an introductory, often a low "teaser" interest rate, fixed for the first two or three years, after which the rate becomes adjustable, usually on an annual basis. Principal and interest payments increase because they are typically "recast" on two common types of nontraditional loans: Interest-only loans and option ARMs. For an interest-only loan, the household pays only interest for a specified period, e.g., five years. Payments are then recast to include the loan's principal, which is amortized over the remaining term of the loan. With an option ARM, the household has the monthly option of paying less than the fully amortizing principal and interest payment, and it may pay as little as a minimum payment that includes no principal and less than the full amount of interest. Unpaid interest is added to the loan balance resulting in "negative amortization." In most option ARMs, the lender recasts the payment to re-amortize the increased principal and interest either periodically, e.g., every 5 years, or whenever the negative amortization reaches a specified cap, typically 125% of the original loan amount. Nontraditional loans may have adjustable interest rates, which can compound the increase in the amount of the monthly payments and the amount of negative amortization.

[2] Speech by Ben S. Bernanke, Chairman, Federal Reserve Board, "Fostering Sustainable Homeownership," at the National Community Reinvestment Coalition Annual Meeting, Washington DC (March 14, 2008) (Bernanke Speech).

[3] See Bernanke Speech.

[4] "Subprime Lending and Alternative Financial Service Providers: A Literature Review and Empirical Analysis," U.S. Department of Housing and Urban Development (March 2006).

[5] See Bernanke Speech.

[6] "The Municipal Costs of Foreclosures: A Chicago Case Study," Housing Finance Policy Research Paper Number 2005–1, Homeownership Preservation Foundation (February 27, 2005).

[7] Hatcher, Desiree, "Foreclosure Alternatives: A Case for Preserving Homeownership," Profitwise News and Views, Federal Reserve Bank of Chicago (February 2006).

[8] "The Impact of Court-Supervised Modification of Subprime Foreclosures," Center for Responsible Lending (February 25, 2008).

[9] See H.R. Conf. Rep. No. 101–222, 101st Cong., 1st Sess. (1989) (accompanying the Financial

Continued

the permissible use of AHP subsidy on which the Finance Board has long relied in construing the Bank Act to limit permissible AHP uses to the purchase, construction, or rehabilitation of affordable housing.[10]

The Finance Board's implementing AHP regulation does not expressly address the use of AHP subsidy to assist members in refinancing or restructuring mortgage loans to otherwise eligible households, although it does implicitly bar such use by not explicitly including loan refinancing or restructuring among the permissible uses. For example, section 951.6(c)(4) establishes the permissible uses of AHP direct subsidy under the homeownership set-aside program, providing that AHP subsidy may be used for down payment, closing cost, counseling, or rehabilitation assistance in connection with a household's purchase or rehabilitation of an owner-occupied unit. 12 CFR 951.6(c)(4). Similarly, section 951.5(c)(1) establishes the permissible uses of AHP subsidy under the competitive application program, providing that the AHP subsidy may be used exclusively for the purchase, construction or rehabilitation of eligible owner-occupied or rental housing projects. Each of these regulatory provisions reflects a long-standing Finance Board interpretation of section 10(j)(2) of the Bank Act that AHP subsidy may be used only for the purchase, construction, or rehabilitation of affordable housing.[11]

On January 15, 2008, the Finance Board approved a request from the San Francisco Bank to waive certain provisions of the AHP regulation to permit the use of AHP subsidy to assist certain otherwise eligible households to refinance or restructure their existing residential mortgage loans. See Resolution No. 2008–01 (Jan. 15, 2008). The waiver also permitted the San Francisco Bank to use AHP subsidy to pay for homeownership or credit counseling costs incurred in connection with the loan refinancing or restructuring. That submission raised a legal issue as to the permissible uses of AHP subsidy under the Bank Act, *i.e.*, whether the subsidy could be used to pay costs associated with the refinancing or restructuring of an existing mortgage loan to an otherwise AHP-eligible household. In granting the waiver, the Finance Board considered the relevant statutory language, its legislative history, and the Finance Board's prior interpretations and concluded that the Bank Act does not direct the Finance Board to confine the use of AHP subsidy exclusively to the purchase, construction, or rehabilitation of affordable housing. Because the use of AHP subsidy to assist members of the San Francisco Bank in refinancing or restructuring mortgage loans represented a departure from past practice, however, the Finance Board committed to undertaking a rulemaking in order to consider whether it should amend its regulations to permit all of the Banks to use AHP subsidy for this purpose.

The Finance Board believes that it has the legal authority to amend its regulations to permit the Banks to use AHP subsidy to pay for costs associated with refinancing or restructuring existing mortgage loans, which costs may include homeownership or credit counseling costs incurred in connection with the transaction. In reaching that conclusion, the Finance Board has looked to the whole of section 10(j) of the Bank Act, which deals exclusively with the AHP, for guidance. As described previously, section 10(j) does not expressly prohibit (or otherwise address) the use of AHP subsidy to refinance or restructure mortgage loans. Section 10(j)(2) does establish general standards for the AHP, by requiring Finance Board regulations to allow members to use AHP subsidy to "finance homeownership" and to "finance the purchase, construction, or rehabilitation" of rental housing. Although the Finance Board has construed this provision narrowly, the Bank Act's language is in fact permissive in nature and can be construed more broadly than has been done in the past. Similarly, although there are multiple references elsewhere in section 10(j) to the purchase, construction, or rehabilitation of affordable housing that could be read to suggest a congressional intent to confine the permissible uses of the AHP subsidy to those purposes, the Finance Board believes that the Bank Act does not compel one to reach that conclusion. For example, the references in section 10(j)(3) to purchase or rehabilitation appear in the context of language that establishes certain priorities for those uses of the AHP funds, which suggests that there must be other eligible, but subordinate, uses. Arguably, that provision could mean simply that purchase and rehabilitation are to be given priority over construction of affordable housing, as that is the one other clearly specified use. In the Finance Board's view, however, the language used in establishing this priority for purchase and rehabilitation also can be read to mean that Congress contemplated that there could be other permissible uses over which purchase and rehabilitation would have priority.

Indeed, it appears clear that Congress, by enacting section 10(j)(9)(A), contemplated that the Finance Board could create other permissible uses for the AHP subsidy. That provision explicitly directs the Finance Board to adopt regulations that "specify activities eligible to receive subsidized advances from the Banks under this program." 12 U.S.C. 1430(j)(9)(A). The fact that Congress expressly has delegated to the Finance Board the authority to specify activities that may be eligible to receive AHP subsidy is compelling evidence that the universe of potentially eligible AHP activities need not, as a matter of law, be confined to the purchase, construction, or rehabilitation of affordable housing, the three uses expressly identified in section 10(j)(2)(B). If those were the only legally permissible uses for the AHP subsidy, Congress likely would not have authorized the Finance Board to adopt regulations specifying the eligible AHP

Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)).

[10] See 62 FR 41812, 41819 (Aug. 4, 1997) (citing 12 U.S.C. 1430(j)(2) in support of statement that use of AHP subsidies for refinancing would be prohibited by the Bank Act). The relevant Conference Committee Report language on which the Finance Board relied provided as follows:

The House bill directed each Bank to establish a program to subsidize interest rates on advances to member institutions that make loans for long-term affordable low- and moderate-income housing at subsidized interest rates. The House bill required each member institution receiving advances under the program to report to the Bank on the use of program advances. The conference report contains the House bill with an amendment that provides standards that limit subsidized advances to (1) loans to finance homeownership purchases or rehabilitation by families with incomes at or below 80% of the median; and (2) to finance the purchase, construction or rehabilitation of rental housing in which at least 20% of the units will be occupied by and affordable for very low income households for the remaining useful life of the property or the mortgage term. See H.R. Conf. Rep. at 430–31.

[11] Notwithstanding that long-standing interpretation, the Finance Board has permitted the use of AHP subsidy to refinance loans in certain narrow circumstances. Thus, section 951.5(c)(8) allows a project to use AHP subsidy under the competitive application program to refinance an existing mortgage loan so long as the transaction produces equity proceeds and those proceeds—up to the amount of the AHP subsidy in the project—are used for the purchase, construction, or rehabilitation of eligible housing units. 12 CFR 951.5(c)(8). In a similar fashion, sections 951.5(c)(7) and 951.6(c)(8) permit the use of AHP subsidy to pay for counseling costs, but only where those costs are incurred in connection with a household's actual purchase of an AHP-assisted unit. See 12 CFR 951.5(c)(7) and 951.6(c)(8). These provisions reflect an earlier interpretation that counseling costs may qualify as "financing homeownership" under section 10(j)(2)(A) of the Bank Act if they are linked to the authorized use of purchasing a unit with AHP assistance.

activities, as was done in section 10(j)(9)(A).

In reading these several provisions of the Bank Act as a whole, the Finance Board has concluded that although Congress has mandated that the regulations must permit the use of AHP subsidy for the purposes specified in section 10(j)(2), *i.e.*, to finance homeownership, or the purchase, construction, or rehabilitation of affordable rental housing, it also has granted to the Finance Board the authority to specify other eligible affordable housing activities. Because Congress has left open the possibility for the Finance Board to designate additional affordable housing activities that may be eligible for AHP subsidy, and because Congress has not expressly addressed loan refinancing or restructuring anywhere within section 10(j), the Finance Board believes that the Bank Act does not require the AHP regulation to prohibit (either expressly or by implication) the use of AHP subsidy to refinance or restructure existing owner-occupied mortgage loans, or to pay for homeownership or credit counseling costs incurred in connection with such transactions. Accordingly, the Finance Board believes that it has the authority under section 10(j)(9)(A) to amend the AHP regulation to allow the use of AHP subsidy for owner-occupied loan refinancing or restructuring, and is issuing this proposed rule to aid it in determining whether, as a policy matter, it should adopt a final rule to that effect and, if it were to do so, what limitations might be appropriate.[12]

E. Proposed New Loan Refinancing or Restructuring Authority

In proposing the amendments to the AHP regulation, the Finance Board would temporarily extend the authority to use AHP direct subsidy to refinance or restructure mortgages to all of the Banks. The Finance Board has based the requirements of the proposed rule generally on the refinancing or restructuring set-aside program as authorized for the San Francisco Bank in Resolution Number 2008–01. The specific requirements in the proposed rule are discussed in the Analysis of Proposed Rule section below.

The Finance Board requests comment on whether it generally is appropriate for the AHP to provide subsidies for refinancing or restructuring existing owner-occupied mortgage loans. The Finance Board also requests comment on whether the use of AHP subsidy for such loan refinancing or restructuring should be limited to specific circumstances, such as for assisting low- and moderate-income households with subprime or nontraditional mortgages that are at risk of losing their homes due to unaffordable increased monthly payments after interest rate resets or principal-and-interest payment recasts. In addition, the Finance Board seeks comment on other ways in which AHP direct subsidy might be used to assist households at risk of foreclosure because of increasing monthly payments due to interest-rate increases or payment recasts of principal and interest.

The proposed rule would authorize a Bank to establish a program targeted to refinancing or restructuring existing subprime and nontraditional loans held by members or their affiliates. The Finance Board requests comment on whether the program authority should be extended to assist households with subprime and nontraditional mortgages that are held by lenders that are not affiliated with the member or mortgages that collateralize mortgage-backed securities (nonaffiliated lenders), and, if so, whether the lender should be obligated to reduce the loan principal, waive fees, or otherwise contribute to the assistance being provided to the homeowner. Currently, the AHP regulation permits members to access AHP direct subsidy to provide down payment and closing cost assistance to households purchasing a home, regardless of whether the household is financing the purchase with the member providing the assistance, with another member, or with a nonaffiliated lender. A Bank, in its discretion, may require a member to make the mortgage on the assisted home purchase.

Under the proposed rule, a member using AHP subsidy to refinance or restructure its own or an affiliate's loan would have to pay, directly or indirectly, an amount equal to at least two times the amount of AHP subsidy toward eligible uses of the subsidy. Moreover, the proposed rule would prohibit members from charging certain costs associated with refinancing, such as prepayment penalties and fees. The same requirement could be difficult to impose upon a nonaffiliated lender as a condition of the household receiving AHP direct subsidy, especially where the mortgage is included in a pool collateralizing a mortgage-backed security. Consequently, the lender could be relieved of a problem loan without any financial consequences. At the same time, households with loans that are not held in portfolio by financial institutions have few options and little flexibility for working out or restructuring their mortgages. Such households may be in greater need of assistance than households that can work directly as customers with the local depository institutions that hold their loans.

The Finance Board requests comment on whether, if the AHP subsidy could be used to assist households to refinance loans held by nonaffiliated lenders, there should still be prohibitions on certain uses of AHP subsidy, for example, for prepayment penalties and pay-off fees to the nonaffiliated lender. If the AHP could not be used to pay prepayment penalties and pay-off fees to nonaffiliated lenders, then the Finance Board requests comment on how a household would pay such costs in order to refinance its mortgage.

In considering the use of AHP subsidy to refinance eligible households with loans held by nonaffiliated lenders rather than members, the Finance Board also requests comment on how else the subsidy could be used to assist households. For example, many households with subprime and nontraditional loans cannot refinance into lower-cost, 30-year fixed-rate mortgages because the values of their homes declined and the households no longer have sufficient equity to qualify, or because the household's loan payments would exceed the maximum debt-to-income ratios of the new lender. The Finance Board requests comment on whether AHP direct subsidy should be used to pay down principal or to provide equity, similar to down payment assistance, in order to allow the household to qualify for a new loan from a member or another entity, especially from federal, state, and local government entities with programs specifically targeted to refinancing subprime and nontraditional mortgages such as FHASecure, and state or local bond programs. For example, if a household did not have the necessary 3 percent equity to qualify to refinance with an FHA or FHASecure mortgage with a maximum loan-to-value ratio of 97 percent, then the AHP subsidy could be used to reduce the principal in order to achieve the qualifying loan-to-value ratio. Alternatively, the AHP subsidy could be used to reduce the principal

[12] In this regard, the Finance Board is mindful of the previously-quoted Conference Committee Report and the extent to which it may have relied on that language in determining to exclude loan refinancing or restructuring from the list of eligible uses for AHP subsidy. Nonetheless, because Congress also delegated to the Finance Board the authority to specify additional permissible uses for the AHP subsidy, the Finance Board believes that it must give precedence to the language that Congress used in the statute, rather than the language of the Conference Committee Report. Thus, the Finance Board does not believe that the Conference Committee Report precludes it from exercising the authority to establish additional permissible uses for the AHP subsidy.

amount of the loan to a level that would result in monthly payments that would meet the lender's underwriting ratios for household debt and expenses. Such an approach has the benefit of leveraging and enhancing refinancing initiatives by the U.S. Department of Housing and Urban Development (HUD) and state and local housing finance agencies aimed at preventing foreclosures and helping to stabilize communities. The Finance Board requests comment on how AHP subsidy could be used in conjunction with federal, state, and local programs designed to assist households in refinancing subprime and nontraditional mortgages.

As discussed earlier, extensive foreclosures and vacant properties can have an adverse effect on a community. The impact of preventing multiple foreclosures concentrated in one community may be greater than that of preventing the same number of foreclosures spread across multiple communities. Because of the nature of the housing problems that have given rise to the Finance Board proposing to allow the temporary use of AHP direct subsidy for refinancing or restructuring existing mortgages, the Finance Board requests comment on whether such refinancing or restructuring assistance should be targeted to households located within neighborhoods and communities that may be at higher risk for defaults and foreclosures. Given the concentration of subprime and nontraditional mortgage products in many low- or moderate-income communities, it may be possible to help the households that are affected directly by unaffordable mortgage payments while indirectly assisting their neighbors by mitigating the negative spillover effects of foreclosures. Many of these neighborhoods are served by community-based organizations that are participating in homeownership and foreclosure prevention counseling programs and have been certified by HUD and the National Foreclosure Mitigation Counseling Program.

Many such community-based organizations serve well-defined areas, have knowledge of the local housing structure and market, have expertise in financing resources and requirements, and currently have counseling relationships with households at risk of foreclosure. These organizations routinely help households obtain the necessary combinations of subsidies and long-term, fixed-rate financing in order to purchase and rehabilitate homes and prevent the loss of their homes. The Finance Board requests comment on whether members should be able to apply for AHP direct subsidies under a refinancing set-aside program on behalf of community-based organizations, rather than households directly, and whether doing so could facilitate the use of AHP subsidy to help stabilize communities that are weakened by higher rates of foreclosures.

The Finance Board intends to publish a comprehensive final rule that incorporates reasonable and appropriate suggestions from commenters. At the same time, the Finance Board recognizes that there may be other ways in which to refinance at-risk households, which are not covered in the specific proposed rule or in this discussion and may not be raised by commenters. The Finance Board requests comment on whether a final rule should include a provision allowing a Bank to apply to the Finance Board for prior approval to establish an AHP refinancing program not covered by a final rule.

II. Analysis of Proposed Rule

A. Loan Refinancing or Restructuring Programs: Proposed Section 951.6(f)(1)

1. General

The proposed rule would add a new paragraph (f) under the existing homeownership set-aside program provisions of section 951.6 of the AHP regulation, which would authorize a Bank, in its discretion, to establish one or more homeownership set-aside programs for the use of AHP direct subsidy by its members to refinance or restructure eligible households' nontraditional or subprime mortgage loans. As a general proposition, the Finance Board is proposing that any new program must comply with the existing requirements in section 951.6, except for certain specified provisions, as well as with the requirements of part 951. Thus, the existing provisions in section 951.6 governing eligible member applicants, member allocation criteria, household income eligibility, Bank discretionary authority to adopt additional household eligibility requirements, maximum subsidy per household, five-year retention agreements, financial or other concessions, financing costs, de minimis cash backs, application approvals, funding procedures, reservation of subsidies, and progress towards use of the subsidy, all would apply to a Bank's loan refinancing or restructuring program. See 12 CFR 951.6(b), (c)(1), (c)(2)(i), (c)(2)(iii), (c)(3), (c)(5)–(c)(7), (c)(9), (d), and (e). Similarly, a Bank's loan refinancing or restructuring program must otherwise meet the requirements of part 951, including the monitoring, recapture and agreements provisions in sections 951.7, 951.8, and 951.9, respectively. The proposal also provides, however, that the requirements in section 951.6(c)(2)(ii), (c)(4), and (c)(8) do not apply to the new programs, nor does the provision of section 951.6(c)(2)(iii) that relates to first-time homebuyers.[13]

2. Funding Allocation

A Bank's loan refinancing or restructuring program, as a homeownership set-aside program under section 951.6, would be subject to the maximum funding allocation limits applicable to set-aside programs under existing section 951.2(b)(2). Thus, under section 951.2(b)(2), a Bank, in its discretion, may set aside annually, in the aggregate, up to the greater of $4.5 million or 35 percent of the Bank's annual required AHP contribution to provide funds to members participating in all homeownership set-aside programs, including loan refinancing or restructuring programs established by the Bank, provided that at least one-third of the Bank's aggregate annual set-aside allocation to such programs is targeted to assist first-time homebuyers.[14] In maintaining the one-third allocation requirement for first-time homebuyers, the proposed rule ensures that the Bank continues to provide assistance to low- and moderate-income first-time homebuyers. The Finance Board requests comment on whether the rule should continue to require that a Bank using its set-aside authority under proposed new paragraph (f) meet the first-time homebuyer requirement. Alternatively, the Finance Board seeks comment on whether the amount of a Bank's allocation to its refinancing or restructuring program should be excluded from the total set-aside allocation prior to calculating the one-third requirement for assistance to first-time homebuyers.

The Finance Board also requests comment on whether to permit a Bank to allocate to a refinancing or restructuring program, as proposed, a portion of its annual AHP contribution in excess of the maximum permitted for

[13] Existing section 951.6(c)(4) sets forth the eligible uses of AHP subsidy under a Bank's homeownership set-aside program, which do not include loan refinancing or restructuring. 12 CFR 951.6(c)(4). Existing section 951.6(c)(8) provides that AHP set-aside subsidies may be used to pay for counseling costs only where the costs are incurred in connection with a homebuyer's purchase of an AHP-assisted unit. See 12 CFR 951.6(c)(8).

[14] See 12 CFR 951.2(b)(2). A Bank also may allot to its current year's AHP from its annual required AHP contribution for the subsequent year, an amount up to the greater of $2 million or 20 percent of its annual required AHP contribution for the current year. 12 CFR 951.2(b)(3).

allocation to the homeownership set-aside programs. Doing so would decrease the amount of the Bank's annual AHP contribution that would be available to projects, including rental projects, which access the program through the competitive application process and serve other housing needs of very low- and low- or moderate-income households. At the same time, the scope of the current need for refinancing or restructuring of subprime and nontraditional mortgages may justify such an increase in the allocation.

B. Definitions: Proposed Section 951.6(f)(2)

Proposed paragraph (f)(2) would add two new definitions of terms related to the loan refinancing or restructuring authority as used in paragraph (f). The proposed definitions are discussed below in the context of specific regulatory requirements.

C. Member Allocation Criteria: Proposed Section 951.6(f)(3)

Proposed paragraph (f)(3) would require that if a Bank opts to allocate AHP subsidy under its loan refinancing or restructuring program through a procedure in which members reserve upfront allocations prior to enrolling households, rather than one in which members reserve AHP subsidy as they enroll individual households, the Bank must establish a period of time during which all members may apply for the subsidy. At the end of that period, the Bank must determine the amount of the AHP subsidy it will reserve for each participating member, based on the number and amount of member requests, a member's capacity to perform under the terms of the program, and the amount of AHP direct subsidy available.

Currently, some Banks use the upfront member reservation procedure, while other Banks use the member reservation upon household enrollment procedure in allocating AHP subsidy to members. The standards in the proposed rule for the upfront member reservation procedure are intended to ensure that the funds are reserved in a fair and equitable manner and that a Bank does not favor particular members by allowing them to reserve access to the program upfront on a member first-come, first-served basis to the exclusion of other members. This is because, under the proposed program, members are already holding the loans that they will refinance or restructure and can estimate demand, while, under the homeownership set-aside program for down payment or rehabilitation assistance, members do not know what the demand will be. Typically, under those homeownership set-aside programs, if a member reserves an upfront allocation, even on a member first-come, first-served basis, and does not commit its entire reserved subsidy by a certain date, the amount reverts to the pool which the Bank makes available for other members. Under the proposed program, however, a member will know that it can refinance or restructure enough loans in its portfolio to use up its entire reservation, thus, the first members to reserve funds on a member first-come, first-served basis would effectively exclude all other members from access to the program. Consequently, the proposed rule would require that, if a Bank chooses to permit members to reserve upfront allocations of AHP funds, the Bank may not do so on a member first-come, first-served basis, but must do so by determining the demand by all interested members and allocating the funds fairly and equitably based on the estimates of individual members' need for funding and the amount of subsidy available.

D. Household Access and Notification: Proposed Section 951.6(f)(4)

Proposed paragraph (f)(4)(ii) would require that members participating in a Bank's loan refinancing or restructuring program make the AHP direct subsidy available to eligible households on a first-come, first-served basis. This is consistent with the implementation of the homeownership set-aside program when AHP subsidy is used for purchase or rehabilitation assistance. This requirement is specified in the proposed rule to ensure that the member does not select those loans in its portfolio that would most benefit the member if they were refinanced or restructured with AHP assistance.

Consequently, proposed paragraph (f)(4)(i) would require participating members to inform all mortgage loan customers of the availability of AHP direct subsidy under the program to assist in such loan refinancing or restructuring, in order to ensure that potentially eligible households are aware of the program and can independently seek assistance from the member. The member could do so by including a notification in regular mailings or statements to its mortgage customers, or by posting the information prominently on its Web site.

E. Eligible Loans: Proposed Section 951.6(f)(5)

Proposed paragraph (f)(5) would provide that a loan is eligible to be refinanced or restructured with AHP direct subsidy if it meets all of the requirements discussed below.

(i) *Member or affiliate loan.* Under the proposed rule, the loan refinancing or restructuring program must be limited to loans originated and/or held by Bank members or their affiliates. One reason for including this limitation is that it allows the Bank to require a member to contribute its own funds or other resources as a condition to receiving the AHP subsidy. Nonetheless, the Finance Board requests comment on whether it is appropriate to provide AHP subsidy to such members because doing so also could be perceived as using AHP subsidy to mitigate the losses of members that made or purchased the nontraditional or subprime loans.

As in Section I.E., above, the Finance Board also requests comment on whether it would be appropriate to allow a member to use AHP subsidy to refinance owner-occupied mortgage loans that are held by other entities. Such a situation could arise, for example, if a household were to apply to a member to refinance a mortgage that is held by a third party, such as another financial institution or an issuer of mortgage-backed securities. In that case, although the household would benefit from the AHP subsidy by obtaining an affordable loan, the refinancing would also benefit the entity holding the loan by removing an "at risk" loan from its books without having any obligation to pay for or otherwise absorb any of the costs of the refinancing. Many of these third-party lenders or loan servicers for mortgages that have been sold into the secondary market may not have the same obligation or incentive to renegotiate their loans or forego any increase in the interest rate on their loans, as would a member that holds these loans in portfolio.

In approving the waiver for the San Francisco Bank, the Finance Board accepted the requirement that the members participating in the program also must contribute to the costs of the refinancing, and has retained that approach in the proposed rule. Nevertheless, before adopting a final rule that would retain that restriction, the Finance Board believes that it should solicit public comment on whether the concerns about the possibility of a "windfall" to such entities that own the loans should be overridden by the demonstrated need of households that would benefit from the receipt of AHP subsidy and that may not otherwise be able to negotiate a refinancing or restructuring of their loans.

(ii) *Owner-occupied.* Under the proposed rule, the loan to be refinanced

must be secured by an owner-occupied unit that is the primary residence for the household. This is consistent with the existing requirements of the homeownership set-aside program for purchase assistance, and with the existing requirements for homeownership projects under the AHP competitive application program, which do not permit AHP subsidy assistance for the purchase, construction or rehabilitation of second homes such as vacation homes. 12 CFR 951.5(c)(1)(i) and 951.6(c)(4).

(iii) *Nontraditional or subprime loan.* Under the proposed rule, only a mortgage that is a nontraditional mortgage loan as defined by the Interagency Guidance on Nontraditional Mortgage Product Risks, issued October 4, 2006 (published at 71 FR 58609) (Interagency Guidance), or an ARM to a subprime borrower with features described in the Interagency Final Statement on Subprime Mortgage Lending, effective July 10, 2007 (published at 72 FR 37569) (Interagency Final Statement), is eligible. An ARM is a mortgage loan with an interest rate that fluctuates in accordance with a designated market indicator over the life of the loan.

The Interagency Guidance defines a nontraditional mortgage loan as a residential mortgage loan product that allows the borrower to defer repayment of principal or interest, including "interest-only" mortgages where a borrower pays no loan principal for the first few years of the loan, and "payment option" ARMs where a borrower has flexible payment options with the potential for negative amortization. Nontraditional mortgages do not include: Fully amortizing residential mortgage loan products; reverse mortgages; and closed-end second-lien or home equity lines of credit (HELOCs) unless they were originated simultaneously with the first lien mortgage loan. Specifically, the Interagency Guidance defines an interest-only loan as a nontraditional mortgage on which, for a specified number of years (*e.g.*, three or five years), the borrower is required to pay only the interest due on the loan during which time the rate may fluctuate or may be fixed. After the interest-only period, the rate may be fixed or fluctuate based on the prescribed index and payments include both principal and interest. The Interagency Guidance defines a payment option ARM as a nontraditional mortgage that allows the borrower to choose from a number of different monthly payment options, such as a minimum payment option based on a "start" or introductory interest rate, an interest-only payment option based on the fully indexed interest rate, or a fully amortizing principal and interest payment option based on a 15- or 30-year loan term, plus any required escrow payments. The minimum payment option can be less than the interest accruing on the loan, resulting in negative amortization when the unpaid interest is added to the loan's principal. If the loan reaches a certain negative amortization cap, the required monthly payment amount is recast to establish a payment level that would fully amortize the outstanding balance over the remaining loan term, although the household would still have the option of paying less than the fully amortizing amount each month. The interest-only option avoids negative amortization but does not provide for principal amortization. After a specified number of years, the household must start paying the principal, and the required monthly payment amount is recast to require payments that will fully amortize the outstanding balance over the remaining loan term of the loan.

The Interagency Final Statement defines a subprime borrower as a borrower displaying one or more credit risk characteristics at the time of loan origination or purchase, as set forth in the Interagency Expanded Guidance for Subprime Lending Programs (Expanded Guidance) (Jan. 31, 2001), and LCU 04–CU–13—Specialized Lending Activities for federally insured credit unions. A subprime loan is a loan to such a borrower. According to the Expanded Guidance, subprime borrowers typically are borrowers with weakened credit histories that include payment delinquencies and possibly more severe problems such as charge-offs, judgments, and bankruptcies. Subprime borrowers also may display reduced repayment capacity as measured by credit scores, debt-to-income ratios, or other criteria such as incomplete credit histories. The Expanded Guidance includes an illustrative list of specific credit risk characteristics displayed by subprime borrowers. Subprime loans have a higher risk of default than loans to prime borrowers.

The Finance Board requests comment on whether loans eligible to be refinanced with AHP subsidy should be limited to purchase money mortgages, or should also include non-purchase money first mortgages that the household used to refinance a previous loan and in which the household took out equity as part of the transaction. If the AHP were used to refinance such non-purchase money first mortgages, then the Finance Board also requests comment on whether there should be a limit as to how much equity the household has taken out of the home through previous refinancing and, if so, what that limit should be. In this regard, the Finance Board also requests comment on whether, and under what circumstances, the proposed refinancing authority should permit the refinancing of separate first and second mortgages into a single combined new mortgage assisted with AHP subsidy, where the second mortgage was used to take equity out of the home.

(iv) *Origination date.* Under the proposed rule, the loan must have been originated on or before July 10, 2007. This date is the effective date of the Interagency Final Statement. Consequently, any subprime loans made after that date should not be eligible for AHP subsidy. The proposed rule would make nontraditional loans subject to this effective date as well.

The proposed rule does not include a requirement that the loan to be refinanced or restructured must have been originated after a certain cut-off date in the past. For example, both the Presidential initiative to freeze interest rates on subprime loans (December 6, 2007) and the "FHA Housing Stabilization and Homeownership Retention Act of 2008" proposed by the Chairman of the House Committee on Financial Services in March 2008, require that the loan to be refinanced must have been originated on or after January 1, 2005. Subprime lending expanded significantly after 2003, with record-breaking origination volumes in 2005, when subprime loans accounted for about 23 percent of total residential mortgage originations.[15] The interest rates on most of these loans will have begun adjusting in 2007 and 2008. The Finance Board requests comment on whether such a cut-off date should be included in the rule.

(v) *Adjustment.* The proposed rule would require that in order to be eligible for AHP subsidy, the interest rate on a loan must have reset, or the principal and interest payments under the loan must have been recast, prior to the date of the household's enrollment in the program; or the interest rate must be scheduled to reset, or the principal and interest payments under the loan must be scheduled to be recast, within 120 days after the date of the household's enrollment in the program.

Loan limit. The proposed rule would not establish a limit on the outstanding principal balance of the loan to be refinanced. In Resolution Number 2008–

[15] "A Short History of Subprime," Brenda B. White, Mortgage Banking (March 1, 2006).

01, the Finance Board required that the loan have an outstanding principal balance of $417,000 or less to be eligible for refinancing. This amount is the conforming loan limit for Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) purchases of mortgages on owner-occupied units that was in effect at the time of Resolution Number 2008–01. In addition, under Resolution Number 2008–01, eligible loans had to be originated on or before July 10, 2007. Consequently, the conforming loan limit at the time of the origination of an eligible loan would not have exceeded $417,000. The Finance Board requests comment on whether loans eligible for refinancing or restructuring with AHP assistance should be subject to a maximum amount. If a limit is appropriate, the Finance Board requests comment on what that limit should be, such as the Fannie Mae/Freddie Mac conforming limit in place at the time at the time of Resolution Number 2008–01, or the higher conforming loan limits authorized by the Economic Stimulus Act of 2008.

F. Eligible Households: Proposed Section 951.6(f)(6)

Proposed paragraph (f)(6) would provide that a household is eligible to receive AHP direct subsidy for the refinancing or restructuring of its loan if the household meets all of the requirements discussed below. The Finance Board requests comment on whether these eligibility criteria are appropriate, and whether any other eligibility criteria should be required for selection of households to participate in the program.

(i) *Delinquency prior to adjustment.* The proposed rule would require that the household has not been more than 30 days delinquent on its loan payments prior to the adjustment in the interest rate or principal and interest payments. The purpose of the proposed program is to assist households that can no longer afford, or will no longer be able to afford, their mortgage payments solely because of a recent or forthcoming increase in payments resulting from an interest-rate increase or a recast of principal and interest. The proposed requirement would help to ensure that the household can maintain its mortgage obligation after the refinancing or restructuring. The Finance Board requests comment on whether a household should be eligible if it was more than 30 days delinquent on its loan payments prior to the adjustment. The Finance Board also requests comment on whether a household should be eligible only if the cause of its existing or potential delinquency is the adjustment, and not other personal financial setbacks, such as job loss, illness or divorce.

(ii) *Unsustainable loan payments after adjustment.* The proposed rule would require that, as a result of the adjustment in the interest rate or principal and interest payments, the household has or will have a total housing cost ratio exceeding 45 percent. Proposed paragraph (f)(2) would define "total housing cost ratio" to mean the household's total monthly principal and interest payments, mortgage insurance premiums, property taxes, hazard insurance premiums, flood insurance premiums, and homeowner association or condominium fees as a percentage of the household's gross monthly income. On September 4, 2007, the Federal Deposit Insurance Corporation (FDIC), the Conference of State Bank Supervisors, and the American Association of Residential Mortgage Regulators issued a joint statement cautioning lenders that a household monthly debt-to-income ratio, which they describe as including principal, interest, taxes, and insurance, above 50 percent increases the likelihood of future difficulties on repayment and delinquencies or defaults. In addition to establishing a total housing cost ratio of 45 percent as a threshold to determine household eligibility for AHP-assisted refinancing, the proposed rule would permit the use of AHP subsidy to achieve a new loan with a total housing cost ratio no greater than 45 percent for the assisted household. The Finance Board requests comment on whether the 45 percent ratio limit is an appropriate threshold for assessing whether a payment is sustainable for a low- or moderate-income household. The Finance Board also requests comment on whether it would be a reasonable use of AHP subsidy to allow a Bank to establish a maximum total housing cost ratio lower than 45 percent.

The proposed rule is predicated on the fact that the household was current on its mortgage payments prior to the interest-rate increase or payment recast, and can no longer afford its monthly housing payments solely as a result of the interest-rate increase or payment recast. Under the proposed rule, it may be possible that an eligible household already had a total housing cost ratio higher than 45 percent under the terms of its original loan prior to the adjustment to the interest rate or principal and interest payments, and past performance would indicate that the household could have sustained its payments at that initial level if the loan payments had not adjusted upward. In this case, the proposed refinancing or restructuring, by using AHP subsidy to reduce the household's total housing cost ratio below 45 percent of its income, would make the household better off financially than it was prior to the adjustment by refinancing the household into a loan with lower payments than the household's initial payments.

The Finance Board requests comment on whether it is appropriate to use AHP subsidy to assist a household to refinance into a long-term, fixed-rate mortgage with total housing cost payments that are lower than the payments the household had prior to the interest-rate or principal-and-interest adjustments that the proposed program seeks to mitigate.

(iii) *Maximum home equity.* The proposed rule would provide that the household's equity in the home may not exceed the greater of $50,000 or 20 percent of the newly appraised value of the home. Under the current homeownership set-aside program provisions of the AHP regulation, the issue of household equity does not arise for home purchase assistance, and household equity is not included as an eligibility standard for rehabilitation of owner-occupied units. The nature of the refinancing or restructuring transaction raises the issue of whether there should be a limit on the amount of a household's equity in the home. In many cases, the existence of significant equity in a home could enable a household to qualify for refinancing without AHP assistance. Substantial equity also represents a financial resource that the household could draw upon to assist in addressing its mortgage obligations. The Finance Board requests comment on whether maximum household equity is an appropriate eligibility requirement and, if so, whether the proposed maximum amount is appropriate.

(iv) *Maximum household financial assets.* The proposed rule would provide that the household may not have more than $35,000 in total financial assets, excluding equity in the home being refinanced or restructured, tax-deferred retirement and education savings, and assets liquidated by the household to pay for eligible uses of AHP subsidy as defined in paragraph (f)(7). In proposing this requirement, the Finance Board intends that the AHP assistance be available to households that have limited other financial resources with which to mitigate or resolve their financial problems related to their level of mortgage payments. The Finance Board requests comment on

whether it is reasonable to include limitations on the amount of wealth a household may have to be eligible, whether the limitations should be based on home equity and total financial assets or net worth, and whether the proposed limitations are appropriate. In particular, the Finance Board requests comment on whether the determination of maximum total financial assets should exclude all or a portion of a household's tax-deferred retirement and education savings, as these may represent significant accrued wealth that the household might otherwise be expected to draw upon to address financial problems. The Finance Board also requests comment on whether a household should be required to contribute to the costs of the refinancing or restructuring of its loan. Under the homeownership set-aside program for purchase or rehabilitation, for example, ten Banks require that the household make a minimum contribution to the purchase or rehabilitation of the home, or award subsidy to the household based on the amount of the household's contribution to the down payment, closing costs or rehabilitation assistance.

(v) *Homeownership counseling.* Under the proposed rule, the household must complete a homeownership or credit counseling program provided by, or based on one provided by, an organization experienced in homeownership or credit counseling. The Finance Board believes that an AHP-assisted household should receive such counseling in connection with the loan refinancing or restructuring in order to help the household avoid delinquency or foreclosure through poor financial management or unsuitable future refinancing or restructuring of the AHP-assisted loan.

G. Eligible Uses of AHP Direct Subsidy: Proposed Section 951.6(f)(7)

Proposed paragraph (f)(7) would require members participating in a Bank's refinancing or restructuring program to provide the AHP direct subsidy for the purpose of paying for one or more of the eligible uses discussed below.

(i) *Interest rate buydown.* Under the proposed rule, the AHP subsidy may be used to buy down permanently the interest rate of the household's loan. The interest-rate buydown must be calculated as the amount of AHP direct subsidy necessary to reduce the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate (Freddie Mac national average rate) to a rate that will achieve, in conjunction with the use of the subsidy for principal reduction as applicable, a household total housing cost ratio of 45 percent or less. The Finance Board proposes that the calculation of the amount of subsidy needed for the buydown be based on the net present value of the earnings difference between the household's reduced interest rate and the higher Freddie Mac national average rate for 10 years because most residential mortgages prepay within the first 10 years of the loan. This requirement also would be consistent with the pilot program previously approved for the San Francisco Bank.

(ii) *Principal reduction.* Under the proposed rule, the AHP subsidy may be used for reduction in the principal balance of the household's loan, calculated as the amount of AHP direct subsidy necessary to reduce the principal to achieve: (A) In conjunction with the use of the subsidy for an interest rate buydown as applicable, a household total housing cost ratio of 45 percent or less; and (B) a maximum loan-to-value ratio of 97 percent based on the home's newly appraised value. The Finance Board requests comment on whether an eligible use of the AHP subsidy should be to pay down loan principal that is the result of negative amortization (adding unpaid interest to the loan principal) on loans, such as option ARMs, that allowed the household the choice each month of paying less than the minimum amount necessary to pay the interest on the loan with no repayment of principal.

(iii) *Qualifying loan refinancing or restructuring costs.* Under the proposed rule, the AHP subsidy may be used to pay for qualifying loan refinancing or restructuring costs, reduced by the amount of any household or other third party contributions towards such costs. "Qualifying loan refinancing or restructuring costs" are defined in proposed paragraph (f)(2) as the following costs incurred in connection with a member's refinancing or restructuring of a household's loan: Property taxes and insurance payments previously paid by the lender on behalf of the household; accrued interest on the loan; and reasonable closing costs for the new AHP-assisted refinanced loan paid to bona fide third parties, as documented on a HUD–1A Settlement Statement. The Finance Board requests comment on whether these costs are appropriate for the use of AHP subsidy.

(iv) *Homeownership counseling costs.* Under the proposed rule, the AHP subsidy may be used for homeownership or credit counseling costs incurred by the household in connection with the refinancing or restructuring of its loan. The Finance Board believes that this is a reasonable use of AHP subsidy as such counseling will help the household avoid delinquency or foreclosure through poor financial management or unsuitable future refinancing or restructuring of the AHP-assisted loan.

H. Maximum Subsidy Amount; Required Member Payments: Proposed Section 951.6(f)(8)

In this proposal, the Finance Board would require each member receiving AHP subsidy to contribute from its own resources an amount at least equal to two times the amount of the AHP subsidy received towards the eligible uses of the AHP subsidy. Proposed paragraph (f)(8) also would require that a member provide the AHP direct subsidy as a grant, in an amount up to a maximum of $15,000 per household, as established by the Bank in its AHP Implementation Plan, which limit applies to all households. The member may not count toward meeting this obligation the value of any fees or compensation that the member may not charge under proposed paragraphs (f)(9)(i) and (ii)(B).

The proposed maximum subsidy limit of $25,000 is consistent with the maximum subsidy limit the Finance Board approved in Resolution Number 2008–01 for the San Francisco Bank refinancing program. The Finance Board believes that the need for assistance for refinancing or restructuring subprime and nontraditional loans warrants a temporary increase in the current AHP homeownership set-aside limit of $15,000 in order to allow for such assistance. Despite the current maximum of $15,000 per household, in 2007 the actual amount of subsidy provided to a household averaged approximately $5,400 under the homeownership set-aside program, and $7,915 for homeownership projects under the competitive application program. The Finance Board requests comment on whether $25,000 is the appropriate limit on the amount of AHP subsidy that may be provided per household under the proposed refinancing or restructuring program.

I. Loan Refinancing or Restructuring Requirements: Proposed Section 951.6(f)(9)

(i) *Original loan.* Proposed paragraph (f)(9)(i)(A) would require that members waive any prepayment fees for the household's prepayment of the original loan being refinanced. Proposed paragraph (f)(9)(i)(B) would require that members not charge for any foreclosure expenses incurred prior to the date of

the refinancing or restructuring of the household's original loan. Proposed paragraph (f)(9)(i)(C) would require that members not charge late charges not already paid by the borrower on the original loan, loan payoff statement fees, and recording costs and document preparation charges in connection with the payoff of the original loan.

The Finance Board believes that such charges are unwarranted in connection with use of AHP subsidy to mitigate a member's losses by helping to pay off and refinance or restructure a loan already held by the member.

(ii) *New AHP-assisted refinanced or restructured loan.* (1) *Loan characteristics.* Proposed paragraph (f)(9)(ii)(A) would require that the new AHP-assisted refinanced or restructured loan provided by the member to the household have all of the characteristics discussed below.

(A) *30-year, fixed-rate first mortgage.* Under the proposed rule, the new loan must be a minimum 30-year, fully amortizing, first mortgage loan with a fixed interest rate that does not exceed the Freddie Mac national average rate. This requirement is intended to provide households with a refinanced or restructured loan that has stable mortgage payments at a level intended to be sustainable to a low- or moderate-income household and thereby reduce the probability that the household will default on the AHP-assisted mortgage. The Finance Board proposes using the Freddie Mac national average rate as the maximum interest rate because it is readily available, consistent, and easy to verify. Nevertheless, the Finance Board recognizes that, in some cases, the Freddie Mac national average rate may be higher than the rate the member is charging for 30-year fixed-rate mortgages, or may reflect a higher margin between the member's cost of funds and the member's standard margin on a mortgage. In such cases, the use of the Freddie Mac national average rate would require more AHP subsidy in a buydown of the interest rate below that amount than would otherwise be necessary for the refinancing. The Finance Board requests comment on whether the maximum interest rate on the new AHP-assisted loan, from which an interest-rate buydown is calculated, should be based on the Freddie Mac national average rate, or on another rate such as the Freddie Mac regional average rate for the member's region, the member's lowest advertised rate for a 30-year fixed-rate mortgage, or a margin above the member's actual cost of funds using the Bank's CIP rate, in order to minimize the amount of AHP subsidy needed to achieve a sustainable fixed-interest rate for the household.

The Finance Board also requests comment on whether it would be reasonable to permit the new loan to be an ARM if the interest rate on the loan is capped and the household's total housing cost ratio would continue to be 45 percent or less at the fully-indexed capped interest rate.

(B) *Maximum loan-to-value ratio.* Under the proposed rule, the new loan must have a maximum loan-to-value ratio of 97 percent of the newly appraised value of the home. The Finance Board has proposed a maximum loan-to-value ratio of 97 percent because some household equity in the home reduces the probability that the household will default on the mortgage, and this loan-to-value ratio is consistent with the minimum equity requirements for refinancing under the FHA and FHASecure programs. At the same time, the depreciation in home values may make it difficult, even with AHP assistance, to achieve a 97 percent loan-to-value ratio for all eligible households' loans. Recognizing this problem, several state bond programs for refinancing subprime ARMs will finance up to 100 percent of the appraised value of the home. The Finance Board requests comment on whether a minimum equity requirement would be appropriate, or whether it would be reasonable to permit a loan-to-value ratio of up to 100 percent of the newly appraised value of the home.

(C) *Escrow account.* Under the proposed rule, the member must establish an escrow account for monthly payments by the household on the new loan for the purpose of paying property taxes, hazard insurance premiums, and flood insurance premiums if applicable. The Interagency Final Statement identifies the failure of the lender to establish escrow accounts for monthly payments of taxes and insurance by the household as a feature that often indicates a subprime loan. Lack of lender-administered escrow accounts may result in the household not paying taxes and insurance directly as required. This could lead to the household's losing its home if the lender finances the arrears and adds them to the household's loan principal, resulting in additional interest charges and increases in monthly payments that the household cannot afford. If the lender does not finance the arrears, then the household may lose its home due to unpaid taxes.

(D) *Secondary financing.* Under the proposed rule, there may be no secondary financing at closing on the new loan, except grants, forgivable loans, or soft loans made by a not-for-profit organization or government agency in order to assist in the loan refinancing or restructuring or that provided down payment or closing cost assistance for the original purchase of the home. The household may need more financial assistance than the AHP and the member can provide under the proposed program. There may be other private and public programs that provide grants or forgivable secondary financing in order to allow households to pay off existing subprime and nontraditional loans and obtain long-term fixed-rate mortgages. The Finance Board wishes to allow a household to avail itself of additional sources of assistance where possible. In addition, a number of low- or moderate-income households may have received grants or forgivable loans for down payments and closing costs for the initial purchase of their homes, and may still be subject to agreements for that assistance.

(E) *Nontraditional or subprime loan.* Under the proposed rule, the new loan may not have any characteristics of a nontraditional or subprime loan. Such a loan would contradict the intention of the proposed program.

(2) *Prohibited fees.* Proposed paragraph (f)(9)(ii)(B) would prohibit the member from charging the household fees on the new AHP-assisted refinanced or restructured loan, including origination fees, and discount points that increase the yield above the Freddie Mac national average rate. Under ordinary circumstances, the member might increase its yield on the new loan in order to compensate for the fact that the household is still a subprime credit risk that increases the risk of delinquency and default on the refinanced or restructured loan. Such methods of increasing the member's yield, which increase the household's cost for the new loan above the amount intended (*i.e.*, the contract rate determined by the targeted total housing cost ratio for each assisted household), would contradict the intent of the proposed program and bring into question the need for the AHP subsidy for the interest-rate buydown of the AHP-assisted refinanced or restructured loan.

In Resolution Number 2008–01, the Finance Board recognized that there may be concerns that AHP subsidy would be used to compensate members for earnings foregone on the original loan, many of which carried interest rates, after adjustments, well above market rates. Several provisions of the proposed rule would prevent any such compensation to the member for the foregone earnings resulting from the

reduction in the interest rate of the original loan to the Freddie Mac national average rate that the member would be earning on the new loan. First, the proposed rule would require that the existing loan be refinanced or restructured into a permanent, self-amortizing 30-year mortgage with a maximum fixed rate no greater than the Freddie Mac national average rate, which means that the member could not charge a higher rate to the household. Second, the proposed rule would permit the use of AHP subsidy to buy down the interest rate only from the Freddie Mac national average rate, and not from any higher rate on the original loan down to the Freddie Mac national average rate. Third, the proposed prohibition on points and fees that would increase the member's yield above the Freddie Mac national average rate also would prevent the member from being compensated for some of the foregone earnings from the higher interest rate on the original loan.

J. Repayment of AHP Subsidy in Event of Foreclosure: Proposed Section 951.6(f)(10)

Proposed paragraph (f)(10) would provide that if, during the AHP five-year retention period, the member, an affiliate of the member, or any other entity forecloses on, or accepts a deed in lieu of foreclosure on, a new AHP-assisted restructured or refinanced loan, the member must repay the Bank a pro rata share of the AHP direct subsidy, reduced for every year prior to the foreclosure or deed in lieu, for the five-year period. The Finance Board believes that it would not be appropriate for a member to use AHP subsidy to help refinance or restructure a loan and subsequently foreclose upon that loan in the short term without repayment of the subsidy. If foreclosure were to occur, the household would not realize the full benefit anticipated and intended from the program. Requiring the member to repay a pro rata share of the subsidy in the case of foreclosure should help to align further the interest of the member with the interest of the homeowner in preserving homeownership. It also is consistent with the statutory requirements that low- or moderate-income households receive a preponderance of the AHP assistance, and that the AHP subsidies Banks provide to members are passed on to the ultimate borrowers. See 12 U.S.C. 1430(j)(9)(D) and (E).

K. Sunset: Proposed Section 951.6(f)(12)

Proposed paragraph (f)(12) would provide that the Banks' authority to establish loan refinancing or restructuring programs pursuant to paragraph (f) will expire on June 30, 2011, and the Bank may not commit AHP subsidy to households under such programs after that date. The FDIC estimates that in 2008 and 2009, about 1.7 million subprime mortgages will reach their reset dates, while a study by Deutsche Bank Securities shows the greatest dollar amount of subprime loans resetting in 2008, with a significant drop in subprime mortgages due to reset after 2010.[16] Therefore, the date of June 30, 2011 was selected.

L. Monitoring: Proposed Section 951.7(b)

The proposed rule would amend existing section 951.7(b), which sets forth the monitoring requirements for homeownership set-aside programs generally, to make a Bank's loan refinancing or restructuring program subject to those monitoring requirements. Accordingly, a Bank's written monitoring policies for its homeownership set-aside programs would have to include policies for monitoring compliance with the requirements of its loan refinancing or restructuring programs. The monitoring policies for the loan refinancing or restructuring programs would include requirements for: (i) Determining whether AHP subsidy was provided to households meeting all applicable household eligibility requirements in section 951.6(c)(2) and (f)(6), and all other applicable eligibility requirements in section 951.6(c) and (f); (ii) Bank review of member certifications prior to disbursement of the AHP subsidy, that the subsidy will be provided in compliance with all applicable eligibility requirements in section 951.6(c) and (f); and (iii) Bank review of back-up documentation regarding household incomes maintained by the member, and maintenance and Bank review of other documentation in the Bank's discretion.

The Finance Board invites comments on all aspects of the proposed rule.

III. Paperwork Reduction Act

The information collection contained in the current AHP regulation, entitled "Affordable Housing Program (AHP)," has been assigned control number 3069–0006 by the Office of Management and Budget (OMB). The proposed rule, if adopted as a final rule, will not substantively or materially modify the approved information collection. Consequently, the Finance Board has not submitted any information to OMB for review under the Paperwork Reduction Act of 1995 (PRA). See 44 U.S.C. 3501 *et seq.*

IV. Regulatory Flexibility Act

The proposed rule, if adopted as a final rule, will apply only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 951

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board proposes to amend 12 CFR, chapter IX, part 951, as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

2. Amend § 951.6 by adding paragraph (f) to read as follows:

§ 951.6 Homeownership set-aside programs.

* * * * *

(f) *Loan refinancing or restructuring programs.*—(1) *General.* A Bank may establish one or more homeownership set-aside programs for the use of AHP direct subsidy by its members to refinance or restructure a household's mortgage loan, provided such programs meet the requirements of this paragraph (f) and otherwise meet the requirements of part 951. The provisions of § 951.6(c)(2)(ii), (c)(4), and (c)(8) shall not apply to such programs, nor shall the provision of § 951.6(c)(2)(iii) relating to first-time homebuyers.

(2) *Definitions.* For purposes of this paragraph (f): *Qualifying loan refinancing or restructuring costs* means the following costs incurred in connection with a member's refinancing or restructuring of a household's loan: property taxes and insurance payments by the lender on behalf of the household; accrued interest on the loan; and reasonable closing costs for the new AHP-assisted refinanced loan paid to bona fide third parties, as documented on a HUD–1A Settlement Statement.

[16] Martin J. Gruenberg, Vice Chairman, FDIC, Speech before the 11th Annual Wall Street Project Economic Summit, New York, New York, January 8, 2008; James R. Hagerty and Ken Gepfer, "One Family's Journey Into a Subprime Trap," Real Estate Journal.com, August 17, 2007.

Total housing cost ratio means the household's total monthly principal and interest payments, mortgage insurance premiums, property taxes, hazard insurance premiums, flood insurance premiums, and homeowner association or condominium fees as a percentage of the household's gross monthly income.

(3) *Member allocation criteria.* If the Bank opts to allocate AHP subsidy through a procedure in which members reserve upfront allocations prior to enrolling households, rather than one in which members reserve AHP subsidy as they enroll individual households, the Bank shall establish a period of time during which all members may apply for the subsidy, after which the Bank shall determine the amount of the AHP subsidy it will reserve for each participating member, based on the number and amount of member requests, a member's capacity to perform under the terms of the program, and the amount of AHP direct subsidy available.

(4) *Household access and notification.* (i) Members shall inform all mortgage loan customers of the availability of AHP direct subsidy under the program to assist in a loan refinancing or restructuring.

(ii) Members shall make the AHP direct subsidy available to eligible households on a first-come, first-served basis.

(5) *Eligible loans.* A loan is eligible to be refinanced or restructured with AHP direct subsidy if it meets the following requirements:

(i) *Member or affiliate loan.* The loan is held by a member or an affiliate of such member;

(ii) *Owner-occupied.* The loan is secured by a first mortgage on an owner-occupied unit that is the primary residence of the household;

(iii) *Nontraditional or subprime.* The loan is a nontraditional mortgage loan as defined by the Interagency Guidance on Nontraditional Mortgage Product Risks issued October 4, 2006 (published at 71 FR 58609), or an adjustable rate mortgage loan to a subprime borrower with features described in the Interagency Final Statement on Subprime Mortgage Lending effective July 10, 2007 (published at 72 FR 37569);

(iv) *Origination date.* The loan was originated on or before July 10, 2007; and

(v) *Adjustment.* (A) The loan's interest rate has reset, or the principal and interest payments under the loan have been recast, prior to the date of the household's enrollment in the program; or

(B) The loan's interest rate is scheduled to reset, or the principal and interest payments under the loan are scheduled to be recast, within 120 days after the date of the household's enrollment in the program.

(6) *Eligible households.* A household is eligible to receive AHP direct subsidy for the refinancing or restructuring of its loan if the household meets the following requirements:

(i) *Delinquency prior to adjustment.* The household has not been more than 30 days delinquent on its loan payments prior to the adjustment in the interest rate or principal and interest payments;

(ii) *Unsustainable loan payments after adjustment.* As a result of the adjustment in the interest rate or principal and interest payments, the household has or will have a total housing cost ratio exceeding 45 percent;

(iii) *Maximum home equity.* The household's equity in the home does not exceed the greater of $50,000 or 20 percent of the newly appraised value of the home;

(iv) *Maximum household financial assets.* The household does not have more than $35,000 in total financial assets, excluding home equity, tax-deferred retirement and education savings, and assets liquidated by the household to pay for eligible uses of AHP subsidy as defined in paragraph (f)(7) of this section; and

(v) *Homeownership counseling.* The household completes a homeownership or credit counseling program provided by, or based on one provided by, an organization experienced in homeownership or credit counseling.

(7) *Eligible uses of AHP direct subsidy.* Members shall provide the AHP direct subsidy to pay for:

(i) The first 10 years of a permanent interest-rate buydown of the interest rate of the household's new loan. The interest-rate buydown shall be calculated as the amount of AHP direct subsidy necessary to reduce the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate to a rate that will achieve, in conjunction with the use of the subsidy for principal reduction as applicable, a household total housing cost ratio of 45 percent or less.

(ii) Reduction in the principal balance of the household's loan, calculated as the amount of AHP direct subsidy necessary to reduce the principal to achieve:

(A) In conjunction with the use of the subsidy for an interest rate buydown as applicable, a household total housing cost ratio of 45 percent or less; and

(B) A maximum loan-to-value ratio of 97 percent based on the newly appraised value of the home;

(iii) Qualifying loan refinancing or restructuring costs in connection with an interest rate buydown and/or principal reduction, reduced by the amount of any household or other third party contributions towards such costs; or

(iv) Homeownership or credit counseling costs in connection with an interest rate buydown and/or principal reduction.

(8) *Maximum subsidy amount; required member payments.* Members shall provide the AHP direct subsidy as a grant, in an amount up to a maximum of $25,000 per household, as established by the Bank in its AHP Implementation Plan, which limit shall apply to all households. As a condition to receiving such AHP subsidy, a member shall pay, from its own resources, eligible uses of AHP subsidy, as defined in paragraph (f)(7) of this section, including waivers of such costs, in an amount equal to at least two times the amount of the AHP subsidy provided.

(9) *Loan refinancing or restructuring requirements.* (i) Original loan. (A) Prepayment fees. Members shall waive any prepayment fees for the household's prepayment of the original loan being refinanced.

(B) *Foreclosure expenses.* Members shall not charge for any foreclosure expenses incurred prior to the date of the refinancing or restructuring of the household's original loan.

(C) *Other fees and expenses.* Members shall not charge late charges not already paid by the household on the original loan, loan payoff statement fees, and recording costs and document preparation charges in connection with the payoff of the original loan.

(ii) *New AHP-assisted refinanced or restructured loan.* (A) Characteristics. The new AHP-assisted refinanced or restructured loan provided by the member to the household shall have the following characteristics:

(*1*) Minimum 30-year, fully amortizing, first mortgage loan with a fixed interest rate that does not exceed the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate;

(*2*) Maximum loan-to-value ratio of 97 percent of the new appraised value of the home;

(*3*) Establishment of an escrow account for monthly payments by the household for the purpose of paying property taxes, hazard insurance premiums, and flood insurance premiums if applicable;

(4) No secondary financing at closing, except grants, forgivable loans or soft loans made by a not-for-profit organization or government agency in order to assist in the loan refinancing or restructuring or that provided down payment or closing cost assistance for the original purchase of the home; and

(5) No characteristics of a nontraditional or subprime loan.

(B) *Prohibited fees.* Members shall not charge the household fees on the new AHP-assisted refinanced or restructured loan, including origination fees, and discount points that increase the yield above the Freddie Mac Primary Mortgage Market Survey weekly national average 30-year fixed-rate mortgage rate.

(10) *Repayment of AHP subsidy in event of foreclosure.* If, during the AHP five-year retention period, the member, an affiliate of the member, or any other entity forecloses on, or accepts a deed in lieu of foreclosure on, a loan restructured or refinanced pursuant to this paragraph (f), the member shall repay the Bank a pro rata share of the AHP direct subsidy, reduced for every year prior to the foreclosure or deed in lieu, for the five-year period.

(11) *Sunset.* The requirements contained in this paragraph (f) shall expire on June 30, 2011, and the Bank may not commit AHP subsidy to households under its program established pursuant to this paragraph (f) after that date.

3. Amend § 951.7 by:

a. In paragraph (b)(1)(i), adding "and § 951.6(f)(6)" after "§ 951.6(c)(2)";

b. In paragraph (b)(1)(ii), adding "and § 951.6(f)" after "§ 951.6(c)"; and

c. In paragraph (b)(2)(i), adding "and § 951.6(f)" after "§ 951.6(c)".

Dated: April 9, 2008.

By the Board of Directors of the Federal Housing Finance Board.

Ronald A. Rosenfeld.

Chairman.

[FR Doc. E8–7949 Filed 4–15–08; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2007–0102]

RIN 0960–AG74

Revised Medical Criteria for Evaluating Cardiovascular Disorders

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are requesting your comments on whether and how we should update and revise the criteria we use to evaluate claims involving cardiovascular disorders in adults and children. These criteria are found in sections 4.00 and 104.00 of the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We are requesting your comments as part of our ongoing effort to ensure that the listings are up-to-date.

After we have considered your comments and suggestions, other information about advances in medical knowledge, treatment, and methods of evaluating cardiovascular disorders, and our program experience using the current listings, we will determine whether we should revise any of the cardiovascular listings. If we propose specific revisions to the listings, we will publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register.**

DATES: To be sure that your comments are considered, we must receive them no later than June 16, 2008.

ADDRESSES: You may submit comments by one of four methods—Internet, facsimile, regular mail, or hand-delivery. Please do not submit the same comments multiple times or by more than one method. Regardless of which of the following methods you choose, please state that your comments refer to Docket No. SSA–2007–0102 to ensure that we can associate your comments with the correct regulation:

1. Federal eRulemaking portal at *http://www.regulations.gov.* (This is the most expedient method for submitting your comments, and we strongly urge you to use it.) In the *Comment or Submission* section of the webpage, type "SSA–2007–0102", select "Go", and then click "Send a Comment or Submission." The Federal eRulemaking portal issues you a tracking number when you submit a comment.

2. Telefax to (410) 966–2830.

3. Letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703.

4. Deliver your comments to the Office of Regulations, Social Security Administration, 922 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days.

All comments are posted on the Federal eRulemaking portal, although they may not appear for several days after receipt of the comment. You may also inspect the comments on regular business days by making arrangements with the contact person shown in this preamble.

Caution: Our policy for comments we receive from members of the public is to make them available for public viewing in their entirety on the Federal eRulemaking portal at *http://www.regulations.gov.* Therefore, you should be careful to include in your comments only information that you wish to make publicly available on the Internet. We strongly urge you not to include any personal information, such as your Social Security number or medical information, in your comments.

FOR FURTHER INFORMATION CONTACT: Diane Braunstein, Director, Office of Compassionate Allowances and Listings Improvement, Social Security Administration, 4468 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

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

What is the purpose of this ANPRM?

The purpose of this ANPRM is to give you an opportunity to send us comments and suggestions on whether and how we might update and revise listings 4.00 and 104.00 for evaluating cardiovascular disorders. We last published final rules revising the criteria that we use to evaluate cardiovascular disorders in the **Federal Register** on January 13, 2006 (71 FR 2311). We are publishing this ANPRM as part of our ongoing effort to ensure that our criteria are effective and reflect the latest advances in medicine.

On which rules are we inviting comments?

We are interested in any comments and suggestions you have on whether and how we might revise, update, and clarify sections 4.00 and 104.00 of the listings. You can find the current rules for these listings on the Internet at the following locations:

- Sections 4.00 and 104.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at *http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm.*
- Section 4.00 of the listings is also available at *http://www.ssa.gov/disability/professionals/bluebook/4.00-Cardiovascular-Adult.htm.*

• Section 104.00 of the listings is also available at *http://www.ssa.gov/disability/professionals/bluebook/104.00-Cardiovascular-Childhood.htm.*

If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

Who should send us comments and suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have cardiovascular disorders. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who represent people who have cardiovascular disorders, State agencies that make disability determinations for us, experts in the evaluation of cardiovascular disorders, and researchers.

What should you comment about?

We are interested in any comments and suggestions you have on how we might update and revise sections 4.00 and 104.00 of our listings. For example, with regard to our listings, we are interested in knowing if:

• You have concerns about any of the provisions in the current cardiovascular listings, such as whether you think we should change any of our criteria or whether you think a listing is difficult to use or to understand.

• You would like to see our cardiovascular listings include something that they do not include now, such as other cardiovascular disorders, additional medical technologies, specific laboratory studies, or new medical criteria.

• You think our cardiovascular listings should include additional functional criteria and, if so, what those criteria should be.

• You think there are cardiac diseases or conditions, however rare, that have such a devastating effect on patients that we should presume that they are unable to work.

• You think new imaging techniques can provide new standards for allowing us to presume disability for certain advanced diseases and conditions.

Will we respond to your comments from this notice?

We will not respond directly to comments you send us in response to this ANPRM. However, after we consider your comments along with other information, such as medical research and other information about advances in medical knowledge, treatment, methods of evaluating cardiovascular disease, and our program experience, we will decide whether and how to revise the listings we use to evaluate cardiovascular disorders. If we propose revisions to these listings, we will publish an NPRM in the **Federal Register.** In accordance with the usual rulemaking procedures we follow, if we publish an NPRM, you will have a chance to comment on the revisions we propose, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

Other Information

Who can get disability benefits?

Under title II of the Social Security Act (the Act), we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

• Workers insured under the Act,

• Children of insured workers, and

• Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How do we define disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or can be expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above that results in . . .
title II	an adult or child	the inability to do any substantial gainful activity (SGA).
title XVI	an individual age 18 or older	the inability to do any SGA.
title XVI	an individual under age 18	marked and severe functional limitations.

How do we decide whether you are disabled?

If you are applying for benefits under title II of the Act, or if you are an adult applying for payments under title XVI of the Act, we use a five-step "sequential evaluation process" to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing SGA? If you are working and the work you are doing is SGA, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a "severe" impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity (RFC) to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your RFC, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under title XVI of the Act. See § 416.924 of our regulations. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.924, 416.994, and 416.994a of our

regulations. However, all of these processes include steps at which we consider whether your impairment(s) meets or medically equals one of our listings.

What are the listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments under title XVI of the Act, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations and apply them to claims under both title II and title XVI of the Act.

How do we use the listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. Part B contains criteria that apply only to individuals who are under age 18. If the criteria in part B do not apply, we may use the criteria in part A when those criteria give appropriate consideration to the effects of the impairment(s) in children. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe as an impairment in the listings. (See §§ 404.1526 and 416.926.)

What if you do not have an impairment(s) that meets or medically equals a listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will not deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the sequential evaluation process. Likewise, we will not decide that your disability has ended only because your impairment(s) no longer meets or medically equals a listing.

List of Subjects

20 CFR Part 404

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

20 CFR Part 416

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

Dated: March 20, 2008.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E8–8111 Filed 4–15–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AM74

Definition of Service in the Republic of Vietnam

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations regarding the definition of service in the Republic of Vietnam. We state that service in the Republic of Vietnam for the purposes of applying the presumption of exposure to herbicide agents includes service on land and on inland waterways in Vietnam. The amendments clarify existing regulatory provisions and ensure the proper administration of VA policy.

DATES: Comments must be received by VA on or before June 16, 2008.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to "RIN 2900–AM74–Definition of Service in the Republic of Vietnam." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rhonda F. Ford, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9739. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rulemaking is necessitated by the recent decision rendered by the U. S. Court of Appeals for Veterans Claims (CAVC) in *Haas* v. *Nicholson*, 20 Vet. App. 257 (2006).

In the *Haas* case, the CAVC addressed what it perceived to be ambiguity in VA's regulatory definitions of the term "service in the Republic of Vietnam." Mr. Haas, a veteran of the U.S. Navy, filed a claim for VA disability compensation based on diabetes that he alleged had resulted from "exposure to Agent Orange/radioactive materials" during his service in Vietnam. *Haas*, 20 Vet. App. at 260. VA denied his claim, concluding that 38 CFR 3.307(a)(6)(iii) does not provide a presumption of herbicide exposure to a Vietnam Era veteran who never set foot on land in the Republic of Vietnam and did not serve on its inland waterways. Additionally, VA interpreted the language in § 3.307(a)(6)(iii) that presumes herbicide exposure for veterans who had "service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in Vietnam" to require that "'the ship must have come to port in the [Republic of Vietnam] and you disembarked.'" *Haas*, 20 Vet. App. at 260 (quoting a letter from a VA regional office). Mr. Haas contended that "service in the Republic of Vietnam" as defined by 38 CFR 3.307(a)(6)(iii) must be read to include service in the offshore waters, regardless of whether the veteran set foot on land.

The issue in *Haas* was whether VA's interpretation of "service in the Republic of Vietnam" in § 3.307(a)(6)(iii) is a permissible interpretation of that regulation and the authorizing statute, 38 U.S.C. 1116(f). The CAVC held that the statute is not clear on its face concerning whether the phrase "service in the Republic of Vietnam" refers only to service on land or encompasses some forms of offshore service. *Haas*, 20 Vet. App. at 265.

Therefore, VA may promulgate a regulatory definition of service in Vietnam. *See Haas*, 20 Vet. App. at 269 ("Given the ambiguity of the statute, VA is permitted to issue regulations in order to resolve the ambiguity."). We note that to the extent that *Haas* was based in part on the CAVC's interpretation of certain Manual M21–1 provisions, we have proposed to rescind those provisions, in a separate notice. 72 FR 66218 (Nov. 27, 2007).

Section 1116(f) provides:

> For purposes of establishing service connection for a disability or death resulting from exposure to a herbicide agent, including a presumption of service-connection under this section, a veteran who, during active military, naval, or air service, served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975, shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4 dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish that the veteran was not exposed to any such agent during that service.

The current definition of service in the Republic of Vietnam in § 3.307(a)(6)(iii) is as follows: "Service in the Republic of Vietnam includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam." The CAVC perceived ambiguity in § 3.307(a)(6)(iii) as to whether the phrase "service in the Republic of Vietnam" includes service exclusively in the waters offshore, i.e., where the "conditions of service" did not involve "duty or visitation" in Vietnam. The perceived ambiguity arose in part from similar language in 38 CFR 3.313, which defines Service in Vietnam as "includ[ing] service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam." 38 CFR 3.313(a). The CAVC suggested that VA viewed § 3.307(a)(6)(iii) as interchangeable with § 3.313, concluding that there is no clear expression of a difference in the definition as it appears in the two distinct regulations, despite the inclusion of a comma in the § 3.313(a) definition and, more importantly, their very different regulatory histories and purposes. The CAVC also concluded that VA's regulation was most reasonably construed to apply to offshore service because certain veterans who served offshore (i.e., those who served for long periods in close proximity to land areas where herbicides were used) would have a risk of herbicide exposure comparable to certain veterans who served on land (i.e., those who served only briefly on land).

We now propose to amend § 3.307(a)(6)(iii) because the CAVC in *Haas* incorrectly conflated the definitions of "service in the Republic of Vietnam" in §§ 3.307(a)(6)(iii) and 3.313 and thereby interpreted § 3.307(a)(6)(iii) in a manner inconsistent with VA's intent in issuing that regulation. By this rulemaking, VA intends to make clear that in § 3.307(a)(6)(iii), "service in the Republic of Vietnam," for purposes of establishing presumptive service connection due to exposure to herbicide agents, applies to a veteran who served in the Republic of Vietnam only if that veteran was physically present on land in Vietnam, or on its inland waterways. The presumption does not apply to a veteran who served only on the waters offshore of Vietnam. We propose to amend § 3.307(a)(6)(iii) to state: "For the purposes of this section, 'service in the Republic of Vietnam' includes only service on land, or on an inland waterway, in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975." The qualifying dates cited in the regulation are those specified by Congress in section 1116 for application of the presumption of exposure to herbicide agents. We believe these dates would also make clear that the rule refers to the country as defined during the relevant time period, as country boundaries may change over time due to political factors.

As stated in our definition, we include only service on land and on inland waterways. For the following reasons, we believe that this definition comports with the legislative intent behind the enactment of the presumption of exposure, as well as the lengthy legislative and regulatory history of the presumption.

Congress first called for consideration of providing compensation for Vietnam veterans exposed to dioxin in the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Public Law 98–542, 98 Stat. 2725, 2728 (1984) ("1984 Dioxin Act"). Section 5 of that statute directed VA to address claims for service connection based on dioxin exposure by issuing rules grounded in "sound scientific and medical evidence." *Id.*

In 1985, VA promulgated 38 CFR 3.311a to implement the 1984 Dioxin Act. The rulemaking notice for § 3.311a noted that herbicides "were used during the Vietnam conflict to defoliate trees, remove ground cover, and destroy crops," and that many veterans "were deployed in or near locations where Agent Orange was sprayed." 50 FR 15848, 15849 (1985). Under 38 CFR 3.311a(b) (1986), VA presumed that veterans who served in Vietnam during the Vietnam era were exposed to dioxin, eliminating the need to establish exposure as a matter of fact. The presumption of exposure extended to "service in the waters offshore and service in other locations, *if the conditions of service involved duty or visitation in the Republic of Vietnam.*" 38 CFR 3.311a(b) (1986) (emphasis added).

In February 1991, Congress enacted The Agent Orange Act of 1991 ("AOA"), Public Law No. 102–4, § 2, 105 Stat. 11, which created and codified 38 U.S.C. 1116. The AOA was understood as codifying existing regulatory presumptions for diseases that Congress believed were linked to Agent Orange exposure. *See, e.g.*, 137 Cong. Rec. S1267 (daily ed. Jan. 30, 1991) (statement of Sen. Daschle) ("[t]he bill will also codify the Secretary's decisions granting presumptions of service connection for soft-tissue sarcoma and non-Hodgkins lymphoma, two rare cancers that have been frequently associated with exposure to components of Agent Orange"); 137 Cong. Rec. S1272 (daily ed. Jan. 30, 1991) (Statement of Sen. Simpson) (stating that "[t]he bill legislatively establishes presumptions of service connection for veterans exposed to agent orange for three conditions: chloracne, non-Hodgkin's lymphoma, and soft-tissue sarcomas," but recognizing that "[i]t is not at all imperative that we take this action legislatively" because "[t]hose presumptions have already been recognized and granted to veterans * * * by the Secretary of Veterans Affairs"); 1991 U.S.C.C.A.N. 11 (signing statement by President Bush stating that the AOA "relies on science" and will "codify decisions previously made by my administration with respect to presumptions of service connection"). The AOA also codified the provision in VA's regulation presuming herbicide exposure in veterans who served "in the republic of Vietnam" during the Vietnam era. Accordingly, it is reasonable to assume that Congress intended to codify VA's interpretation of the presumption of exposure, or at least to reserve to VA the authority to maintain that interpretation. *See* 66 FR 23166 (May 8, 2001) (recognizing this legislative history and stating that subsequent legislation offered "no basis

to conclude that Congress intended to broaden that definition to include deep-water service").

In September 1993, VA proposed to delete 38 CFR 3.311a and amend § 3.307(a) "so that it * * * incorporates the definition of the term 'service in the Republic of Vietnam' from 38 CFR 3.311a." 58 FR 50528, 50529 (1993).

In 1996, based on new evidence concerning the deployment of troops and the use of herbicides, Congress amended the statutory definitions of the Vietnam era. *See* Veterans' Benefits Improvement Act, Public Law No. 104–275, 110 Stat. 3322, 3342. In 38 U.S.C. 101(29), for general purposes, the definition was broadened to cover the period from February 28, 1961, to May 7, 1975. But Congress recognized that "[h]erbicides and defoliants were not in use throughout the 'Vietnam era' as that term would be newly defined" and "such materials were not introduced into the Republic of Vietnam until January 9, 1962. Therefore, * * * *for purposes of sections 1116* and 1710 of title 38, United States Code, provisions of law *which specify benefits based on presumptive exposure to herbicides and defoliants*, the term 'Vietnam era' [was] limited to the period between January 9, 1962, and May 7, 1975." S. Rep. No. 104–371, at 21 (1996) (emphasis added). Thus, Congress found the deployment of herbicides relevant to the use of the term "service in the Republic of Vietnam" in § 1116 and, at that time, the deployment of herbicides and the definition of the term were both understood to include only service on land or on inland waterways.

Subsequent VA rulemakings stated with even greater clarity that a veteran who served only offshore is not entitled to the presumption of exposure. For example, a September 1997 rulemaking notice stated that 38 CFR 3.814(c)(1) incorporated the definition of "serv[ice] in the Republic of Vietnam" from § 3.307(a)(6)(iii) as excluding consideration of service in offshore waters. It explained: "Because herbicides were not applied in waters off the shore of Vietnam, limiting the scope of the term service in the Republic of Vietnam to persons whose service involved duty or visitation in the Republic of Vietnam limits the focus of the presumption of exposure to persons who may have been in areas where herbicides could have been encountered." 62 FR 51274 (1997). *See also* 69 FR 44614, 44620 (July 27, 2004) (indicating that presumption did not extend to service in offshore waters).

As a factual matter, our legislative interpretation accords with what is known about the use of herbicides during Vietnam. Although exposure data is largely absent, review of military records demonstrate that virtually all herbicide spraying in Vietnam, which was for the purpose of eliminating plant cover for the enemy, took place over land. *See* Stellman JM, Stellman SD, Christian R, Weber T, Tomasallo C, *The extent and patterns of usage of Agent Orange and other herbicides in Vietnam*, 422 Nature 681–687 (2003). Regarding inland waterways, Navy riverine patrols reported to have routinely used herbicides for clearance of inland waterways. *See* "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam" (1993 National Academies of Science); "Characterizing Exposure of Veterans to Agent Orange and Other Herbicides Used in Vietnam: Final Report" (2003, National Academy Press). Blue water Navy service members and other personnel who operated off shore were away from herbicide spray flight paths, and therefore were not likely to have incurred a risk of exposure to herbicide agents comparable to those who served in foliated areas where herbicides were applied.

In connection with the *Haas* proceedings, questions were raised as to a 2002 study performed for Australia's Queensland Health Scientific Services by their National Research Center for Environmental Toxicology titled, *Examination of the Potential Exposure of Royal Australian Navy Personnel to Polycholorinated Dibenzodioxins and Polychorinated Dibenzofurans Via Drinking Water*. The study assumed that ocean water near estuarine sources could contain dioxin if dioxin had been used over land. It then noted that Australian Navy boats distilled water, obtained primarily from locations near such estuarine sources, to use as drinking water. Based on these factual predicates, the study found that the distillation process used by those boats did not remove dioxin when dioxin was added to salt water and the distillation process was performed in a laboratory, but, instead, the distillation concentrated the dioxin level in the water. This study was not peer reviewed or published and, to our knowledge, has never been cited in any subsequent reputable study of Agent Orange.

At the outset, we note that this recent study was not a part of our original rulemaking, or subsequent rulemakings, related to the definition of Vietnam service and therefore could not possibly have informed our definition of service in Vietnam under § 3.307. Moreover, VA scientists and experts have noted many problems with the study that caution against reliance on the study to change our long-held position regarding veterans who served off shore. First, as the authors of the Australian study themselves noted, there was substantial uncertainty in their assumptions regarding the concentration of dioxin that may have been present in estuarine waters during the Vietnam War. In particular, although distillation concentrated the dioxin level in the water, the concentrating effect was shown to be dependent upon the amount of sediment in the water, such that a large sediment level, consistent with estuarine waters, could significantly reduce the concentrating effect. Second, even with the concentrating effect found in the Australian study, the levels of exposure estimated in this study are not at all comparable to the exposures experienced by veterans who served on land where herbicides were applied. This is true even if we were to assume that a person drank only such distilled water and did so for an extended tour. Third, it is not clear that U.S. ships used distilled drinking water drawn from or near estuarine sources or, if they did, whether the distillation process was similar to that used by the Australian Navy. For these reasons, we do not intend to revise our long-held interpretation of "service in the Republic of Vietnam" based on this study. Although we are not extending the meaning of "service in Vietnam" in this rulemaking, because we do not believe that Congress intended that term to encompass areas that were not likely to have been exposed to sprayed herbicides, we will continue to assess any peer-reviewed studies brought to VA's attention on this topic, including studies concerning the possibility of exposure through drinking water, groundwater runoff, airborne drift, and transportation. We will publish any determination extending the definition of service in the Republic of Vietnam if it is warranted by such studies.

To the extent there is ambiguity in the statutory reference to service in the Republic of Vietnam, we believe that language is most reasonably interpreted to refer to service within the land borders of the Republic of Vietnam. It is both intuitively obvious and well established that herbicides were commonly deployed in foliated land areas and would have been released seldom, if at all, over the open waters off the coast of Vietnam. The legislative and regulatory history indicates that the purpose of the presumption of exposure was to provide a remedy for persons who may have been exposed to herbicides because they were stationed

in areas where herbicides were used, but whose exposure could not actually be documented due to inadequate records concerning the movement of ground troops.

Because it is known that herbicides were used extensively on the ground in the Republic of Vietnam, and because there are inadequate records of ground-based troop movements, it is reasonable to presume that any veteran who served within the land borders of Vietnam was potentially exposed to herbicides, unless affirmative evidence establishes otherwise. There is no similar reason to presume that veterans who served solely in the waters offshore incurred a significant risk of herbicide exposure.

It is conceivable that some veterans of offshore service incurred exposure under some circumstances due, for example, to airborne drift, groundwater runoff, and the proximity of individual boats to the Vietnam coast. For purposes of the presumption of exposure, however, there is no apparent basis for concluding that any such risk was similar in kind or degree to the risk attending service within the land borders of the Republic of Vietnam. More significantly, because "offshore service" encompasses a wide range of service remote from land and thus from areas of actual herbicide use, there is no reason to believe that any risk of herbicide exposure would be similarly pervasive among veterans of offshore service as among veterans of service within the land borders of Vietnam.

In *Haas* the Veterans Court noted that "there are many ways to interpret the boundaries of a sovereign nation such as the former Republic of Vietnam" and stated that, based on established definitions of sovereign territory, the statutory phrase "in the Republic of Vietnam" could conceivably be construed to encompass waters extending to a distance of either 12 or 200 miles from the coast. *Haas*, 20 Vet. App. at 263–64. It is apparent that any risk of airborne or water-borne exposure due to herbicide spraying on land areas would be negligible for most of such distances, and we believe it is highly unlikely that Congress intended to adopt one of those measures rather than limiting the presumption to persons who served on land where herbicides were actually in use. Finally, we note that, to the extent there may be a risk of exposure through airborne drift or water runoff, that risk would exist across land borders Vietnam shares with other nations as well as to drift over open seas, yet Congress clearly did not intend the presumption to extend beyond the land borders of the Republic of Vietnam in those instances.

It is also relevant to note that VA's interpretation results in a logical and easily manageable presumption of exposure, whereas the alternate interpretation suggested in *Haas* would entail precisely the type of difficult policy and case-by-case determinations that presumptions are generally designed to avoid. As the Veterans Court noted in *Haas*, the category of "offshore service" may encompass persons who served hundreds of miles from Vietnam's coast. We believe it is implausible that Congress intended to encompass all offshore service, irrespective of whether there is any likelihood that such service involved the potential for exposure resulting from application of herbicides in the Republic of Vietnam. However, if Congress intended to presume herbicide exposure for veterans who served in offshore waters, but only to the extent there was some risk of herbicide exposure through airborne drift or water-borne runoff, it would be exceedingly difficult and highly speculative to define the class of persons to whom the presumption applies, in the absence of clear evidence defining the point at which the risk of exposure by such means ceases to exist. The legislative and regulatory history does not allude to any basis for making such determinations, which would be essential to application of the presumption under the interpretation set forth in *Haas*. The fact that it would be exceedingly difficult, if not impossible, to define the parameters of the presumption in any logical and meaningful way strongly suggests that Congress did not intend to encompass offshore service for purposes of the presumption of herbicide exposure.

We have found no indication that Congress intended a presumption covering offshore service. Rather, in providing a presumption of herbicide exposure based on service "in the Republic of Vietnam," we believe Congress reasonably intended to distinguish between areas where herbicides were actually applied and other areas, such as offshore areas, where herbicides were not used. That interpretation is reasonable because it comports with VA's long-standing interpretation of its own regulations, which Congress intended to codify in 38 U.S.C. 1116; because it comports with known facts regarding the use of herbicides in Vietnam; because it results in a rule that can easily be administered; and because the alternate interpretation suggested in *Haas* would be exceedingly difficult, if not impossible, to define and apply in a meaningful, non-arbitrary manner.

The CAVC's observation that there may be similarity between certain persons who served offshore and certain persons who served on land does not provide a basis for a different interpretation. "The 'task of classifying persons for * * * benefits * * * inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line.'" *United States R.R. Retirement Bd.* v. *Fritz*, 449 U.S. 166, 179 (1980) (quoting *Mathews* v. *Diaz*, 426 U.S. 67, 83–84 (1976)). The same concern would exist for any rule interpreting the parameters of the presumption of exposure, whether it is limited to service on land or to service within some specified distance from land. For the reasons explained above, we believe it is far more reasonable to interpret the presumption as limited to service on land than to service at some arbitrary distance from land.

We also note that a veteran who does not meet the requirements of § 3.307(a)(6)(iii) for application of the presumption of service connection based on service in Vietnam may establish direct service connection under § 3.307(a)(6) and § 3.309(e) based on herbicide exposure if the veteran can establish that he or she was actually exposed to herbicides in service. Section 3.307(a)(6)(iii) only defines when the presumption of exposure to herbicide agents will apply. Additionally, as part of its duty to assist, VA will assist a claimant in obtaining any relevant evidence related to a claim for exposure to herbicide agents.

For consistency and to avoid possible similar ambiguities in the interpretation of the term, we propose to amend 38 CFR 3.814(c)(1) to clarify the meaning of "service in the Republic of Vietnam" in that regulation. Section 3.814 provides benefits for spina bifida to children of veterans who served in Vietnam, based on those veterans' presumed exposure to herbicide agents. Because currently the definition parallels the definition of service in Vietnam in § 3.307(a)(6)(iii), we propose to amend the definition to parallel the clarifications of that definition established by this rulemaking.

Additionally, 38 CFR 3.815 provides benefits for covered birth defects to children of women Vietnam veterans, based on those veterans' service in Vietnam. Section 3.815 was added to VA's adjudication regulations largely based on a study of women Vietnam veterans and women non-Vietnam veterans. *See* 67 FR 200 (Jan. 2, 2002) (discussing *Pregnancy Outcomes*

Among U.S. Women Vietnam Veterans, Kang, *et al.,* 38 Amer. J. Indus. Med. 447 (2000)). The study compared women Vietnam veterans, defined as women whose permanent tour of duty included service in Vietnam between July 4, 1965, through March 28, 1973, to women non-Vietnam veterans, defined as women assigned to a military unit in the United States during that time and whose tour of duty did not include service in Vietnam. According to the study, women Vietnam veterans experienced a higher prevalence of birth defects among their children than women veterans who did not serve in Vietnam. The study did not assess a specific cause for the difference in adverse pregnancy outcomes, but identified many potential risk factors for abnormal reproductive outcomes in women Vietnam veterans, including, in addition to herbicide exposure, risk factors associated with military hospital nursing conditions in Vietnam (all women Vietnam veterans in the study were nurses), such as physical stress and exposure to waste anesthetic gases and ethyleneoxide. The study did not expressly state whether it considered any women who served solely on ships off the coast of Vietnam, but the focus on risk factors such as herbicide exposure and hospital service strongly suggests that the study focused on land-based service. Although not all of the additional risk factors described in the study, such as psychological stress, were exclusive to women who served on land in Vietnam, it appears that the study only considered such women. As such, the benefits provided in § 3.815 were not based solely on herbicide exposure, but were based solely on service on land. For that reason, the rule specifically defined "service in the Republic of Vietnam" consistent with the definition provided in § 3.307(a)(6)(iii), and intended only to include veterans who served on land. (In fact, in defining an individual eligible for consideration under the rule, the rule specifically refers to "the date on which the veteran first entered the Republic of Vietnam." 38 CFR 3.815(c)(2).) For this reason, and for consistency, we will additionally revise the definition of service in the Republic of Vietnam in § 3.815(c)(1) to parallel the definitions in §§ 3.307 and 3.814. As such, benefits under § 3.815 will be provided to women who served on land or in inland waters, but not offshore. The definition of service in the Republic of Vietnam in § 3.815(c)(1) as revised differs from the definitions in §§ 3.307 and 3.814 in that the dates for service in Vietnam in § 3.815 are controlled by Congress' definition of service in Vietnam for the purposes of the authorizing statute for that regulation, 38 U.S.C. 1831.

The definition of "service in the Republic of Vietnam" as stated in §§ 3.307(a)(6)(iii), 3.814(c)(1), and 3.815(c)(1) is only intended to be used for those sections, as those are the only sections that address VA benefits based on service in Vietnam and the potential exposure to herbicide agents therein. To ensure this, we will add the statement "For the purposes of this section" to the beginning of the definitions in §§ 3.307(a)(6)(iii), 3.814(c)(1), and 3.815(c)(1). For the same reason, we propose to amend 38 CFR 3.313 to specify that the definition of "service in Vietnam" therein applies to that section only. In addition, we propose to amend the title of § 3.313 to read, "Presumption of service connection for non-Hodgkin's lymphoma based on service in Vietnam." The definition of "Service in Vietnam" in § 3.313(a) will remain unchanged. We are not making any substantive change to the regulation by these revisions. The intent of the term "Service in Vietnam" in § 3.313 is completely different from that which was intended in § 3.307(a)(6)(iii). *See* 55 FR 25339 (June 21, 1990). The title change additionally reflects specifically what the regulation addresses.

Section 3.313 was added based on the results of a study of the association of selected cancers with service in the U.S. military in Vietnam by the Centers for Disease Control (CDC). The CDC study found that Vietnam veterans have roughly a 50 percent increased risk of developing non-Hodgkin's Lymphoma after service in Vietnam. A similar increased risk was not seen among veterans who served in other locations during the Vietnam Era. The Secretary thereupon made a determination that there is a relationship between Vietnam service and non-Hodgkin's Lymphoma. Unlike § 3.307(a)(6)(iii), § 3.313 is not linked to herbicide exposure, merely service in Vietnam.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule does not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866—Regulatory Planning and Review

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rulemaking are 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: January 8, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Amend § 3.307(a)(6)(iii) by revising the last sentence to read as follows:

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) * * *

(6) * * *

(iii) * * * For the purposes of this section, "service in the Republic of Vietnam" includes only service on land, or on an inland waterway, in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.

3. Amend § 3.313 by revising the section heading and adding at the beginning of the first sentence of paragraph (a) "For purposes of this section," to read as follows:

§ 3.313 Presumption of service connection for non-Hodgkin's lymphoma based on service in Vietnam.

(a) * * * For the purposes of this section, * * *

* * * * *

4. Amend 3.814(c)(1) by revising the last sentence to read as follows:

§ 3.814 Monetary allowance under 38 U.S.C. chapter 18 for an individual suffering from spina bifida whose biological father or mother is or was a Vietnam veteran.

* * * * *

(c) * * *

(1) * * * For the purposes of this section, "service in the Republic of Vietnam" includes only service on land, or on an inland waterway, in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975.

* * * * *

5. Amend 3.815(c)(1) by revising the last sentence to read as follows:

§ 3.815 Monetary allowance under 38 U.S.C. chapter 18 for an individual with disability from covered birth defects whose biological mother is or was a Vietnam veteran; identification of covered birth defects.

* * * * *

(c) * * *

(1) * * * For the purposes of this section, "service in the Republic of Vietnam" includes only service on land, or on an inland waterway, in the Republic of Vietnam during the period beginning on February 28, 1961, and ending on May 7, 1975.

* * * * *

[FR Doc. E8–8091 Filed 4–15–08; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 20

RIN 2900–AM77

Board of Veterans' Appeals: Expedited Claims Adjudication Initiative—Pilot Program

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to launch an initiative for accelerated claims and appeals processing at four VA facilities, based on volunteer participation by eligible claimants. The purposes of this proposed initiative are to provide a model to streamline the VA claims adjudication and appeals process systemwide and to obtain resolution of individual claims and appeals at the earliest time possible in order to provide final decisions to veterans and their families with regard to their claims for benefits. If this initiative is successful at the four trial sites, the data obtained from this initiative may provide a basis for expanding some, or all, of the program nationwide, and ultimately help accelerate the processing of all claims and appeals.

DATES: Comments must be received by VA on or before June 16, 2008.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to "2900–AM77—Expedited Claims Adjudication Initiative—Pilot Program." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–5978. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Within the Department of Veterans Affairs is a Veterans Benefits Administration (VBA or Administration) whose primary function is the administration of nonmedical VA benefits programs that provide assistance to veterans and their dependents and survivors. 38 U.S.C. 7701(a). VBA is under the Under Secretary for Benefits, who is directly responsible to the Secretary for the operations of the Administration. 38 U.S.C. 7701(b). VBA's adjudication rules are found at 38 CFR part 3. The Board of Veterans' Appeals (BVA or Board) is an administrative body within VA that decides appeals from decisions of Agencies of Original Jurisdiction (AOJs) of claims for veterans' benefits, as well as occasional cases of original jurisdiction. The Board is under the administrative control and supervision of a Chairman who is directly responsible to the Secretary. 38 U.S.C. 7101(a). The Board's Appeals Regulations are found at 38 CFR part 19, and its Rules of Practice are found at 38 CFR part 20.

The VA claims adjudication and appeals process is designed with many

procedural protections for claimants. As a result of these procedural protections, the amount of time it takes to process an initial claim and an appeal can be unnecessarily lengthened due to various statutory and regulatory response periods. Often, a case may sit without any action occurring while waiting for one of these response periods to end.

In an effort to help accelerate the processing of all claims and appeals by providing a model to streamline the claims adjudication and appeals process systemwide, VA proposes to launch a pilot program known as the Expedited Claims Adjudication (ECA) Initiative (Initiative) at four VA facilities. The goal of this proposed Initiative is to obtain resolution of individual claims and appeals at the earliest time possible by greatly reducing the time that a case sits without any action occurring while waiting for a statutory or regulatory response period to run. By eliminating unnecessary waiting time in this Initiative, VA would provide faster final decisions to veterans and their families with regard to their claims for benefits. The data obtained from this Initiative may provide a basis for expanding the Initiative to other VA facilities in an effort to accelerate processing time for all claims and appeals in the VA adjudication system as a whole. The Initiative will last for a period of 2 years from the effective date of the final implementing regulations, and claimants would have the opportunity to voluntarily elect participation in the Initiative during this 2-year period. All claims for which participation in the Initiative is properly elected would be processed in accordance with these rules, unless participation is revoked or VA terminates the Initiative.

Participation in the Initiative would be strictly voluntary. The proposed ECA Initiative would be predicated on the claimant agreeing, at the beginning of the claims process, to waive certain identified statutory and regulatory time limits and processing actions. To ensure that any waiver executed by the claimant would be knowing and voluntary, participation in the Initiative would only be open to claimants who, at the time of electing to participate in the Initiative, are represented by a recognized Veterans Service Organization (VSO) or an accredited agent or attorney for whom the claimant has properly executed and filed a VA Form 21–22, "Appointment of Veterans Service Organization as Claimant's Representative," or a VA Form 21–22a, "Appointment of Individual as Claimant's Representative," as appropriate. *See* 38 CFR 14.631. ECA participation may only be elected at the beginning of the VA claims adjudication process, and not more than 30 days after VA notifies the claimant about participation in the Initiative. Participation would be effectuated only if *both* the claimant and his or her representative sign an ECA Initiative Agreement and Waiver of Rights (ECA Agreement) certifying that the claimant has consulted with his or her representative to determine if participation in the Initiative is in his or her best interest.

As noted above, in order to participate in the Initiative under this proposed rule, a claimant would have to waive certain procedural protections provided in VA statutes and regulations in order to allow VA to process his or her case on an accelerated basis. These procedural protections may consist of time limits, as well as other identified processing issues and actions. A claimant's decision to participate in the ECA would be revocable at any time in the VA claims or appeals process. There would be no penalty for revocation of ECA participation. Rather, upon express or implied revocation of ECA participation, the claimant's case would continue to be processed, from that point forward, using ordinary and established procedures under current statutes and regulations governing claims adjudication. In other words, the claimant's case would then fall into the regular stream of cases, and be processed in the same manner as if ECA participation had not been elected and would continue being processed from the date on which express revocation was received by VA or the date of the claimant's action that constituted an implied revocation of ECA participation under proposed § 20.1509(c). The claimant's case would essentially continue from the same point in the adjudication process that it was when it left the ECA.

Under this proposed Initiative, VBA would process claims from ECA participants at the following four designated regional offices: Nashville, Tennessee; St. Paul, Minnesota; Philadelphia, Pennsylvania; and Seattle, Washington. ECA participants would have to reside within the local jurisdiction of one of the four participating VA regional offices in order to be eligible to participate in the Initiative. The jurisdiction of the Nashville, St. Paul, and Seattle regional offices extends to residents of Tennessee, Minnesota, and Washington, respectively. The jurisdiction of the Philadelphia regional office extends to residents of the 40 easternmost counties of Pennsylvania and residents of the seven southernmost counties of New Jersey. These four regional offices were selected as they are all high performing stations with experienced leadership that have successfully handled pilot programs in the past without an adverse impact on customer service or the efficient processing of claims not covered by such programs. The four selected regional offices also represent a diverse cross section of all regional offices in terms of claims volume. Such diversity will provide VA with greater insight as to the potential success of the Initiative should future consideration be given to expanding it to the entire VA system.

Due to the unique procedural nature of the ECA, and the legal and procedural complexities associated with certain types of claims, during the duration of the 2-year pilot program, under proposed § 20.1502(c) participation in the ECA would only be available for claims for disability compensation benefits under 38 CFR parts 3 and 4, excluding matters that involve survivor benefits (such as claims for Dependency and Indemnity compensation, *see* 38 CFR 3.5, and claims for burial benefits, *see* 38 CFR 3.1600 through 3.1612) and simultaneously contested claims (including matters related to insurance). As outlined in proposed § 20.1502(c), for the duration of the 2-year pilot program, the Initiative would be available for original claims for disability compensation benefits, as well as claims for an increased disability rating, claims to reopen previously-denied compensation benefits claims, and requests for revision of an AOJ decision based on clear and unmistakable error.

For those cases appealed to the Board under the Initiative, the Board would establish teams of attorneys to screen the appeals filed by ECA participants to determine the adequacy of the record for decisional purposes, pursuant to the Board's authority under 38 U.S.C. 7107(f). If the development of the record was inadequate, the Board would take appropriate action, such as solicit a waiver of AOJ consideration of newly-obtained evidence, or remand the case if unavoidable, so that when the appeal reached its place on the Board's docket it would be ready for prompt adjudication. *See* 38 CFR 19.9. Each appeal in the ECA Initiative would be decided in regular order according to its place on the Board's docket, in accordance with 38 U.S.C. 7107(a)(1). However, nothing in this proposed rule would prevent a claimant from filing a motion to have his or her case advanced on the Board's docket, subject to the provisions of 38 U.S.C. 7107(a)(2).

The ECA Agreement under this proposed rule would cover any claim that is expressly listed on the agreement, including any downstream element of the claim, such as assignment of a disability rating and effective date, and any claim that is inextricably intertwined to a covered claim. *See Dingess/Hartman* v. *Nicholson,* 19 Vet. App. 473, 484 (2006) (recognizing that a claim for service connection includes five elements: veteran status; existence of a disability; a connection between the veteran's service and the disability; degree of disability; and effective date). ECA participants would agree to a number of conditions that would be outlined in the ECA Agreement that they *and* their representatives would sign. The ECA Agreement would be consistent with the rules that are outlined in proposed subpart P of part 20, title 38. The ECA Agreement would explain the terms of the Initiative, the procedural rights waived under the Initiative, the responsibilities of both the participant and VA under the Initiative, and the right to revoke participation. Except as specifically provided in these proposed rules, claims processed under this Initiative would be adjudicated according to the adjudication procedures outlined in part 3 of title 38, CFR, and appeals would be subject to the Board's Appeals Regulations and Rules of Practice, as outlined in parts 19 and 20 of title 38, CFR. Any matter related to a claim for veterans benefits that is not otherwise covered by these proposed rules would be governed by normal rules pertaining to veterans benefits in title 38, CFR.

Under this proposed rule, upon receipt of a claim for benefits at one of the four participating VA regional offices, as described in proposed § 20.1501(e), VA would promptly mail claimants notice of the opportunity to participate in the ECA Initiative. Election to participate must then be made within 30 days of the date of the notice of the opportunity to participate, as set forth in proposed § 20.1503(a).

The ECA Initiative involves both claims and appeals processing. Because most of the abbreviated processing times at the appeals stage concern established statutory and regulatory time periods governing appeals, we propose to place the rules for the Initiative in new subpart P, part 20, of the Board's Rules of Practice. We propose to include a cross reference to the ECA Initiative in part 3, Adjudication.

The parameters of the proposed rule are highlighted below. For clarity, the descriptions below follow, to the extent possible, the order of claims and appeals processing, rather than the order of the rules.

Identification of Evidence Upon Filing a Claim

Proposed § 20.1503(d) would provide that, upon electing participation in the Initiative, participants would agree to promptly identify all relevant evidence, including any VA records, any non-VA Federal records (such as Social Security disability records), and any private records (such as treatment records from a family physician). If the participant requires assistance from VA in obtaining any identified records, the participant would provide VA the appropriate release forms so VA could attempt to promptly obtain the records on behalf of the participant. *See* 38 CFR 3.159(c).

Period To Respond to VA Requests for Information and Evidence

Under 38 U.S.C. 5103(b)(1) and 38 CFR 3.159(b)(1), a claimant has up to 1 year to respond to a VA request for information and evidence necessary to substantiate a claim for benefits, although if the claimant has not responded to the request within 30 days, VA may decide the claim prior to the expiration of the 1-year period. By electing ECA participation under proposed § 20.1503, ECA participants would agree to waive the right to this 1-year response period and instead agree to respond to a VA request for information and evidence necessary to substantiate their claim(s) within the 60-day period prescribed in proposed § 20.1504(a)(1). Participants would also agree to respond to additional VA requests for evidence within the 30-day period prescribed in proposed § 20.1504(a)(2).

Period To File Notice of Disagreement

ECA participants would agree under this Initiative that if they receive an adverse VA decision on a claim(s), they will waive the right to the statutory 1-year period to initiate an appeal by filing a Notice of Disagreement (NOD), and instead file a NOD with an adverse VA decision on the claim(s) within the 60-day period prescribed in proposed § 20.1504(a)(4). *See* 38 U.S.C. 7105(b)(1); 38 CFR 20.302(a). If an ECA participant did not file a NOD during this 60-day period, but later decided within the remaining portion of the 1-year appeal period under 38 U.S.C. 7105(b)(1) to file a NOD, he or she could still pursue that appeal. However, the filing of a NOD after the 60-day period would constitute an implied revocation of participation in the ECA initiative under proposed § 20.1509(e). In that case, the covered claims would then proceed in accordance with established laws and regulations, as if ECA participation had not been elected. Alternatively, under proposed § 20.1509(e), an ECA participant may file a motion for extension of the 60-day period, based on good cause. Such motion must be filed with VA *prior* to the expiration of the 60-day period. Provided that the motion is granted, the participant will remain in the Initiative.

Review by Decision Review Officer

ECA participants under proposed § 20.1505 would agree that if they file a NOD as to an adverse decision on a covered claim(s), the decision would be reviewed by a Decision Review Officer under the provisions of 38 CFR 3.2600.

Hearing Before Decision on Claim

As set forth in proposed § 20.1507(a), ECA participants would agree that, if they request a hearing before VBA, they will only have one hearing on their claim(s), the hearing will be conducted by a Decision Review Officer, and that no hearing will be held until after the participating VA regional office that has jurisdiction over the ECA participant's claim makes an initial decision on the claim. *See* 38 CFR 3.103(c) and 3.2600(c). The reason for this latter requirement is to avoid unnecessary delays that would be caused by waiting to conduct a hearing on a claim that the participating VA regional office may grant when the initial decision is made on the claim.

Period To File Substantive Appeal

Under current laws and regulations, claimants have 60 days from the date of mailing of the Statement of the Case (SOC) in which to file a Substantive Appeal, or the remainder of the one-year period in which to file the NOD, whichever period is longer. 38 U.S.C. 7105(d)(3); 38 CFR 20.303(b). ECA participants under this proposed rule would agree that if they continue to pursue an appeal in their case, they will waive the right to this time period, and instead file a Substantive Appeal within the 30-day period prescribed in proposed § 20.1504(a)(5). If an ECA participant did not file a Substantive Appeal during this 30-day period, but later decided within the remaining time available under 38 U.S.C. 7105(d)(3) and 38 CFR 20.303(b) to do so, he or she could still file a timely Substantive Appeal. However, the claimant's filing of a Substantive Appeal after the 30-day period would constitute an implied revocation of participation in the ECA Initiative under proposed § 20.1509(c). In that case, the appeal would then proceed in accordance with established

laws and regulations, as if ECA participation had not been elected. Alternatively, under proposed § 20.1509(e), an ECA participant may file a motion for extension of the 30-day period, based on good cause. Such motion must be filed with VA *prior* to the expiration of the 30-day period. Provided that the motion is granted, the participant will remain in the Initiative.

Certification of Appeal to the Board

Proposed § 20.1504(b) would provide that upon receipt of a timely Substantive Appeal, the participating VA regional office would certify covered claims and transfer the appellate record to the Board within 30 days of receipt of the Substantive Appeal or within 30 days of the receipt of any additional submissions following the Substantive Appeal, but no later than 60 days from receipt of the Substantive Appeal. *See* 38 CFR 19.35 and 19.36.

Period To Submit Requests for a Hearing, Change in Representation, or Additional Evidence After Certification and Transfer of Appeal

Under 38 CFR 20.1304(a) and (b), claimants have a period of 90 days from notification that their appeal has been certified and transferred to the Board in which to submit: (1) A request for a personal hearing; (2) additional evidence; or (3) a request for a change in representation. ECA participants would agree to waive the right to this 90-day period and instead agree to submit any request for a personal hearing, additional evidence, or request for a change in representation to the Board within the 30-day period prescribed in proposed § 20.1504(a)(6). If following the passing of this 30-day period an ECA participant decided to submit a request for a personal hearing, additional evidence, or a request for a change in representation, he or she could still do so within the remaining available time period provided pursuant to 38 CFR 20.1304, but such would constitute an implied revocation of the claimant's participation in the ECA Initiative pursuant to proposed § 20.1509(c). Alternatively, under proposed § 20.1509(e), an ECA participant may file a motion for extension of the 30-day period, based on good cause. Such motion must be filed with VA *prior* to the expiration of the 30-day period. Provided that the motion is granted, the participant will remain in the Initiative.

Board Hearing

By law, an appellant must be provided with an opportunity for a hearing before the Board may decide the appeal. 38 U.S.C. 7107(b). An appellant is provided the following options for a Board hearing: an in-person hearing at the Board's offices in Washington, DC; an in-person hearing before the Board at the local VA regional office; or a hearing before the Board through the use of videoconference technology. *See* 38 U.S.C. 7107(d) and (e); 38 CFR 20.700(e), 20.702(a), and 20.705. As prescribed in proposed § 20.1507(b), ECA participants who appeal an adverse decision on their covered claim(s) to the Board would (1) receive only one hearing before the Board, and (2) the Board, after consulting with the participant and his or her designated representative, would determine the type of hearing that the participant will have so as to schedule it in as short a time as reasonably possible. An in-person hearing at the Board's offices in Washington, DC, would be chosen only if geographically convenient for the participant, or if the participant expressly agrees to travel at his or her own expense to the Board's offices for the hearing. *See* 38 CFR 20.712.

Consideration of Evidence Submitted After Statement of Case

Under current laws and regulations, claimants have the right to have the AOJ consider evidence submitted or received after issuance of an SOC. 38 U.S.C. 7104(a). Claimants also have the right to issuance of a Supplemental Statement of the Case (SSOC) if there are material changes in, or additions to, the information in the SOC or any prior SSOC. 38 U.S.C. 7104(a), 7105(d); 38 CFR 19.9(a), (b)(3), 19.31, 19.37, 20.800, 20.903(b) and 20.1304(c). As prescribed in proposed § 20.1508(b)(2), if ECA participants or their representative submit additional evidence after the SOC is issued, and continue to pursue their appeal by filing a timely Substantive Appeal, they are deemed to have waived their right to initial review of this evidence by the AOJ, including readjudication of their claim and issuance of any required SSOC. Rather, as an ECA participant, they will agree to have any such evidence reviewed by the Board in the first instance. In agreeing to this waiver by virtue of electing to participate in the Initiative, claimants would acknowledge that their claim may be granted or denied based on the Board's consideration of this new evidence in the first instance. By executing an ECA Agreement with their representatives, ECA participants would essentially be offering such waiver at the outset of the claims process. Because participants and their representatives are already aware of the evidence they are submitting, an additional waiver of AOJ review of such evidence, outside of that waiver already contained in the ECA Agreement, would be unnecessary.

If, however, VA obtains new relevant evidence in an appeal that was not submitted by the participant or his or her authorized representative, under proposed § 20.1508(b)(1) VA would provide a copy of the new evidence to the participant and his or her representative and solicit from the appellant a waiver of AOJ review of the new evidence pursuant to the procedures outlined in § 20.1304(c). In other words, unlike evidence submitted by the appellant or representative, AOJ review of evidence obtained by VA would not be automatically waived by virtue of the execution of an ECA Agreement. Rather, VA would actively solicit a waiver of AOJ review of such evidence, as such waiver would not be inherent in ECA participation. If the appellant declines to provide a waiver at that time, his or her participation in the Initiative would end. The claim would then be processed using ordinary and established procedures under the rights afforded under current statutes and regulations applicable from that point forward.

Screening and Review by the Board

The Board is statutorily required to consider and decide appeals in the order in which they are placed on its docket (with limited exceptions). 38 U.S.C. 7107(a). Under this Initiative, as explained in proposed § 20.1506, the Board would use its statutory authority to screen ECA cases that are appealed to the Board to ensure that the record is adequate for decisional purposes. 38 U.S.C. 7107(f). If the record is found to be inadequate, appropriate action would be taken by the Board pursuant to 38 CFR 19.9, including but not limited to: soliciting a waiver from the participant permitting the Board to review new evidence obtained by VA in the first instance; seeking clarification from the participant of matters such as hearing requests and representation; and, where necessary, remanding the case for further development. A case screened by the Board for appellate review would be finally decided in docket order (a remand is not a final order) and would not be advanced on the Board's docket except as provided in 38 CFR 20.900(c).

Extension of Time Limits

Under current law, certain time limits may be extended upon request, for good cause shown. *See, e.g.*, 38 CFR 3.109(b), 20.303, 20.1304(b). The ECA Initiative is intended to streamline the claims and appeals process. One of the primary vehicles used to accomplish this goal is

the shortening of various time limits typically available to claimants, as outlined above. Because the Initiative is predicated on abbreviated time limits, extension requests are inconsistent with the goals of the program, as they would lengthen the claims and appeals process. Nevertheless, VA recognizes the pro-claimant nature of the veterans benefits adjudication system, and realizes that extensions are sometimes both unavoidable and necessary to properly process a claim and/or an appeal. Accordingly, under proposed § 20.1509(c)(3), a participant's request for an extension of any of the time limits modified by the Initiative will serve as an implied revocation of participation in the program, *unless* the participant shows on motion that there is good cause for the extension request. Examples of such extenuating circumstances include, but are not limited to, illness on the part of the participant or representative of such severity that precludes action during the relevant period, and death or withdrawal of a representative. If the extension request is not granted, the request itself would serve as an implied revocation of participation in the Initiative, and from the date of the action constituting the implied revocation the participant's claim would be adjudicated as if he or she had not elected to participate in the Initiative (i.e. under existing claims adjudication procedures).

Waiver of Procedural Matters

Inherent in the execution of the ECA Agreement is the waiver of several procedural rights typically afforded to claimants in the VA system, most notably time periods allotted under existing law to take certain actions, such as the time period for filing a NOD or Substantive Appeal, or the period to respond to a VA request for additional evidence. All of these time periods are specifically outlined in proposed § 20.1504, and would be identified in the ECA Agreement signed by the participant and his or her representative.

However, there are other procedural processing issues that may arise in a case that would not be specifically outlined in either the ECA Agreement or this proposed rule, and for which a waiver would not have been secured by virtue of participation in the Initiative. It would be virtually impossible to separately identify in the ECA Agreement or this proposed rule all potential processing issues that may arise, yet without the participant's waiver of any procedural defects that may develop, the claims adjudication process could be unnecessarily prolonged. For example, if a Veterans Claims Assistance Act (VCAA) notice letter sent to a claimant contained a minor defect, the claims adjudication process would need to be delayed while a corrective VCAA letter was sent to the claimant and a reasonable period was allowed for reply (typically 60 days).

Such delay is inconsistent with the objectives of the Initiative, which seeks to streamline the claims and appeals process and eliminate unnecessary waiting periods in claims processing. This proposed rule therefore provides a mechanism for the waiver of any procedural processing issues not specifically addressed in the ECA Agreement. Proposed § 20.1508(a) provides that an ECA participant would be required to waive any specifically identified procedural processing issues and actions when requested by VA in writing or at a hearing. In such circumstances, VA would provide the ECA participant with a clear explanation of the right being waived.

Should the participant fail to provide such waiver, or if such waiver is not received within 30 days of the waiver request, or if any request for an extension of time to respond pursuant to proposed § 20.1509(c)(3) is not granted, the participant would be deemed to have revoked participation in the Initiative and the claim(s) would thereafter be processed as though the participant had not elected participation in the Initiative. As noted above, such waiver would not be required for matters that have already been waived by virtue of participation in the Initiative.

Revocation of ECA Participation and Compliance With Initiative Requirements

One of the key features of the Initiative is its reliance on voluntary participation. As such, the Initiative would provide for both express and implied revocation of participation in the program.

Under proposed § 20.1509(b), an ECA participant would be able to expressly revoke participation in the Initiative at any time by submitting a written revocation request to the appropriate participating VA regional office or the Board, as appropriate. As of the date the revocation request is received, the claim(s) would be processed using the claims adjudication procedures outlined in the existing statutory and regulatory scheme.

Proposed § 20.1509(c) would provide that a participant's failure to comply with the terms of the executed Agreement and Waiver of Rights would have the same effect as express revocation—that of terminating participation in the Initiative and having the claims processed using established claims adjudication and appeals procedures. Participation in the Initiative would be implicitly revoked if a participant: (1) Fails to comply with any of the time limits outlined in proposed § 20.1504(a); (2) fails to waive initial AOJ consideration of any evidence obtained by VA that was not considered in the SOC; (3) requests an extension of any of the time limits in § 20.1504(a), unless good cause is found pursuant to proposed § 20.1509(c)(3); or (4) fails to comply with the terms of the ECA Agreement, as determined by VA.

Proposed § 20.1509(d) would also provide that if an ECA participant dies during the pendency of his or her claim, participation would be impliedly revoked.

Under proposed § 20.1509(a), unless the participant expressly or impliedly revokes his or her participation in the Initiative, all covered claims, i.e., all eligible claims for which ECA participation has been elected, would be processed by VA or the Board in accordance with the provisions of this proposed rule until a final VA decision of the agency of original jurisdiction or the Board has been issued.

Termination of the Initiative

Proposed § 20.1510 would provide that VA may terminate the Initiative at any time. Proposed § 20.1510 would also explain that if VA terminates the Initiative, VA would notify participants and their representatives in writing and inform them that any covered claims will be processed from the date of termination in the same manner as if the participant had not elected to participate in the Initiative.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. It will not affect any small organizations or small governmental jurisdictions, and will not have a significant economic impact on these small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility

analysis requirement of 5 U.S.C. 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under Executive Order 12866, as it raises novel legal or policy issues arising out of legal mandates.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116, Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: December 27, 2007.

James B. Peake,

Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on April 11, 2008.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR parts 3 and 20 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, Subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Add § 3.161 to read as follows:

§ 3.161 Expedited Claims Adjudication Initiative—Pilot Program.

Rules pertaining to the Expedited Claims Adjudication Initiative Pilot Program are set forth in part 20, subpart P, of this chapter.

(Authority: 38 U.S.C. 501(a))

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a), and as noted in specific sections.

4. Add subpart P to read as follows:

Subpart P—Expedited Claims Adjudication Initiative—Pilot Program

Sec.

Subpart P—Expedited Claims Adjudication Initiative—Pilot Program

§ 20.1500 Rule 1500. Expedited Claims Adjudication Initiative.

(a) *Purpose.* The Expedited Claims Adjudication Initiative is a pilot program designed to streamline the claims adjudication and appeals process. This subpart establishes procedures governing this Initiative.

(b) *Outline of Initiative.* This Initiative allows eligible claimants to voluntarily participate in an alternative claims adjudication program as set forth in this subpart, which is predicated on the claimant's waiver of certain identified statutory and regulatory time limits, procedural rights, and processing issues that may arise.

(c) *Scope.* Except as specifically provided in this subpart, claims processed under this Initiative will be adjudicated according to the procedures outlined in part 3 of this chapter, and appeals will be processed according to the Appeals Regulations and Rules of Practice, as outlined in parts 19 and 20 of this chapter. Any matter not otherwise covered by this subpart will be governed by existing rules in this title.

(d) *Duration.* The Secretary will accept an executed Agreement and

Waiver of Rights as provided in § 20.1503 of this part for a period not to exceed 2 years from the effective date of the Initiative.

(Authority: 38 U.S.C. 501(a))

§ 20.1501 Rule 1501. Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Initiative* means the Expedited Claims Adjudication Initiative as promulgated by this subpart.

(b) *Participant* means any eligible claimant who elects to participate in the Initiative by executing, with his or her representative, an Expedited Claims Adjudication Initiative Agreement and Waiver of Rights as provided in § 20.1503 of this part.

(c) *Covered claim or covered claims* means any claim or claims, as described in § 20.1502(c) of this part, that a participant elects to have processed under the rules governing the Initiative, including any downstream element of the claim(s), such as assignment of a disability rating and effective date, and any claim that is inextricably intertwined with a covered claim.

(d) *Representative* means a representative of a recognized Veterans Service Organization or an accredited attorney or agent, as set forth in part 14 of this chapter, for whom a claimant has properly executed and filed a VA Form 21–22, "Appointment of Veterans Service Organization as Claimant's Representative," or a VA Form 21–22a, "Appointment of Individual as Claimant's Representative," as required by § 14.631 of this chapter.

(e) *Participating VA regional office* means one of the following four VA regional offices: Nashville, Tennessee; St. Paul, Minnesota; Seattle, Washington; and Philadelphia, Pennsylvania. The jurisdiction of the Nashville, St. Paul, and Seattle regional offices extends to residents of Tennessee, Minnesota, and Washington, respectively. The jurisdiction of the Philadelphia regional office extends to residents of the 40 easternmost counties of Pennsylvania and residents of the seven southernmost counties of New Jersey. For purposes of this Initiative only, the jurisdiction of these regional offices extends only to a covered claim, as described in § 20.1502(c) of this part.

(Authority: 38 U.S.C. 501(a))

§ 20.1502 Rule 1502. Eligibility.

To participate in the Initiative, a claimant must:

(a) At the time the Agreement and Waiver of Rights is executed, have a representative, as defined in § 20.1501(d) of this part;

(b) Reside within the jurisdiction of a participating VA regional office, as defined in § 20.1501(e) of this part; and

(c) File one of the following types of claims for VA disability compensation as outlined in parts 3 and 4 of this chapter at a participating VA regional office:

(1) Original claim;

(2) Claim for an increased rating;

(3) Claim to reopen a previously denied claim based on the submission of new and material evidence as provided in § 3.156 of this chapter; or

(4) Requests for revision of a decision of an agency of original jurisdiction under § 3.105 of this chapter based on clear and unmistakable error.

(Authority: 38 U.S.C. 501(a))

§ 20.1503 Rule 1503. Election, identification of evidence, and representation.

(a) *When and how election made.* Upon the filing of a claim described in § 20.1502(c) of this part, VA will promptly notify the claimant in writing of the opportunity to participate in the Initiative and provide the claimant with an Agreement and Waiver of Rights. A claimant may elect to participate in the Initiative by filing an executed Agreement and Waiver of Rights as provided in paragraphs (b) and (c) of this section within 30 days of the date of the notice of the opportunity to participate in the Initiative. An election to participate in the Initiative can be revoked at any time in accordance with § 20.1509 of this part.

(b) *Execution of agreement.* To participate in the Initiative, a claimant and his or her representative must execute an Agreement and Waiver of Rights on a form prescribed by the Secretary. The claimant will specifically identify in the Agreement and Waiver of Rights all claims he or she wishes to have processed under the Initiative.

(c) *Where to file.* The executed Agreement and Waiver of Rights must be filed with the participating VA regional office that has jurisdiction over the claim.

(d) *Identification of relevant evidence.* Upon executing the Agreement and Waiver of Rights, the participant will identify all relevant evidence in support of his or her claim(s), including any VA records, non-VA Federal records (such as Social Security disability records), and any private records (such as treatment records from a family physician) within the time prescribed in § 20.1504(a)(1). If the participant requires assistance from VA in obtaining any identified records, the participant will provide VA the appropriate release form so VA may attempt to promptly obtain the records on behalf of the participant.

(e) *Effect of change in representation on the election.* If a participant changes or terminates representation after having made a valid election to participate in the Initiative, participation in the Initiative will continue under the terms of the signed Agreement and Waiver of Rights, unless the participant indicates, in writing, pursuant to § 20.1509(b) of this part, that he or she wishes to revoke participation.

(Authority: 38 U.S.C. 501(a))

§ 20.1504 Rule 1504. Time limits.

The following time limits will be applicable to all covered claims:

(a) *Time limits to be observed by the participant.* The participant will comply with the following time limits for all covered claims:

(1) *Response to initial notice letter.* The time limit for responding to the notification required by § 3.159(b)(1) of this chapter regarding the information and medical or lay evidence necessary to substantiate a claim will be 60 days.

(2) *Subsequent requests by VA for additional information and evidence.* The time limit for responding to any subsequent request by VA for additional information or evidence will be 30 days.

(3) *VA request for waiver.* The time limit for responding to a VA request for waiver as set forth in § 20.1508 of this part, will be 30 days.

(4) *Notice of Disagreement.* The time limit for filing a Notice of Disagreement pursuant to § 20.302(a) of this part will be 60 days.

(5) *Substantive Appeal.* The time limit for filing a Substantive Appeal pursuant to § 20.302(b) of this part will be 30 days.

(6) *Following certification of appeal to the Board.* Following the issuance of notification that the appeal has been certified and transferred to the Board, the time limit for taking the following actions pursuant to § 20.1304 of this part will be 30 days:

(i) Request a hearing before the Board,

(ii) Request a change in representation, or

(iii) Submit additional evidence or argument.

(b) *Time limit to be observed by the participating VA regional office.* The participating VA regional office shall certify covered claims and transfer the appellate record to the Board as set forth in §§ 19.35 and 19.36 of this chapter within 30 days of the receipt of the Substantive Appeal, or within 30 days of receipt of any additional submissions following the Substantive Appeal, but no later than 60 days from the receipt of the Substantive Appeal.

(Authority: 38 U.S.C. 501(a))

§ 20.1505 Rule 1505. Review of initial benefits claims decision.

If a participant files a Notice of Disagreement as to a covered claim, the decision of the participating VA regional office will be reviewed by a Decision Review Officer under the provisions set forth in § 3.2600 of this chapter.

(Authority: 38 U.S.C. 501(a))

§ 20.1506 Rule 1506. Board review of cases.

(a) The Board will screen cases that are certified and transferred to the Board under the Initiative to determine whether the record is adequate for decisional purposes. If the Board determines that the record is inadequate, the Board will take appropriate action pursuant to § 19.9 of this chapter.

(b) A case screened by the Board for purposes of determining the adequacy of the record will be decided in docket order and will not be advanced on the Board's docket except as provided in § 20.900(c) of this part.

(Authority: 38 U.S.C. 7107(a), (f))

§ 20.1507 Rule 1507. Hearings.

(a) *Before the participating VA regional office.* Upon request, a participant is entitled to a hearing by a Decision Review Officer before the participating VA regional office as provided in §§ 3.103(c) and 3.2600(c) of this chapter, subject to the following limitations:

(1) No hearing will be conducted prior to the initial adjudication of the claim by the participating VA regional office.

(2) Only one hearing on a claim will be conducted at the participating VA regional office and the hearing will be conducted by a Decision Review Officer in accordance with § 3.2600 of this chapter.

(b) *Before the Board.* Upon request, a participant is entitled to a hearing before the Board as provided in §§ 20.700 through 20.717, and 20.1304, subject to the following limitations:

(1) Only one hearing before the Board will be conducted.

(2) After consultation with the participant and his or her representative, the Board will determine whether the hearing will be conducted in person in Washington, DC, at the participating VA regional office with jurisdiction over the claim, or by electronic equipment as set forth in § 20.700(e) of this part. The Board's determination will be based primarily on the type and place of hearing which will allow for scheduling at the earliest possible date. An in-person hearing will be conducted in Washington, DC, only if geographically convenient for the participant and his or her representative, or if the participant agrees to travel to Washington, DC, at his or her own expense.

(Authority: 38 U.S.C. 501(a))

§ 20.1508. Rule 1508, Waiver.

(a) *General.* When requested by VA, a participant will waive, in writing, identified procedural processing issues and actions relating to covered claims. VA will provide the participant with a clear explanation, in writing, as to what rights he or she may be waiving. If a hearing on appeal is conducted, the waiver may be formally and clearly entered on the record at the time of hearing. A response to a written waiver request from VA must be filed within the 30-day period prescribed in § 20.1504(a)(3) of this part. Such waiver is not required for matters that have already been waived by virtue of electing participation in the Initiative.

(b) *Evidence obtained or submitted after the Statement of the Case.*

(1) *Evidence obtained by VA.* If new evidence is obtained by VA following issuance of a Statement of the Case under §§ 19.29 and 19.30 of this chapter, and the claim(s) is not otherwise granted in full based on this new evidence, VA will provide a copy of such evidence to the participant and representative, and request a waiver of review by the agency of original jurisdiction of such evidence and issuance of a Supplemental Statement of the Case pursuant to the provisions set forth in § 20.1304(c) of this part. A response to a written waiver request from VA must be filed within the 30-day period prescribed in § 20.1504(a)(3) of this part.

(2) *Evidence submitted by participant or representative.* If new evidence is submitted by the participant or representative following issuance of a Statement of the Case under §§ 19.29 and 19.30 of this chapter, the participant, by virtue of executing a valid Agreement and Waiver of Rights, is deemed to have knowingly and voluntarily waived agency of original jurisdiction review of such evidence and issuance of a Supplemental Statement of the Case, which permits the Board to review such evidence in the first instance.

(Authority: 38 U.S.C. 501(a))

§ 20.1509 Rule 1509. Compliance and revocation of participation.

(a) Unless the participant revokes his or her participation in the Initiative as provided in paragraphs (b), (c) or (d) of this section, all covered claims will continue to be processed by VA or the Board in accordance with the provisions of this subpart until a final decision of the agency of original jurisdiction or the Board has been issued.

(b) *Express revocation.* A participant may revoke participation in the Initiative at any time by submitting a revocation request in writing. The revocation request must be filed with the participating VA regional office unless the case has been certified and transferred to the Board, in which case the revocation request should be filed with the Board. As of the date of receipt of the revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative.

(c) *Implied revocation.* The failure of a participant to meet the terms of these rules, as outlined in the executed Agreement and Waiver of Rights, will have the same result as if the participant had expressly revoked his or her participation in the Initiative. As of the date of the action constituting such implied revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative. Grounds for implied revocation of participation include, but are not limited to:

(1) The failure of the participant or representative, as appropriate, to comply with any of the time limits set forth in § 20.1504(a) of this part;

(2) The failure to waive initial consideration by the agency of original jurisdiction of any evidence obtained by VA that was not considered in the Statement of the Case;

(3) A request by a participant or representative for an extension of any of the time limits set forth in § 20.1504(a) of this part, unless a motion for good cause is granted, as described by paragraph (e) of this section; and

(4) Any other failure on the part of the participant to comply with the terms of the Agreement and Waiver of Rights, as determined by VA.

(d) *Death of participant.* If a participant dies while his or her claim is being processed, participation in the Initiative will be deemed revoked.

(e) *Extensions.* Extensions of any of the time limits described in this subpart may only be granted when the participant demonstrates on motion that there is good cause for the extension request. At no time may time periods be extended beyond those provided by law to all claimants and appellants. Examples of good cause include, but are not limited to, illness of the participant or the representative of such severity that precludes action during the period;

death of an individual representative; illness or incapacity of an individual representative that renders it impractical for a participant to continue with him or her as representative; or withdrawal of an individual representative. Motions for extensions must be filed prior to the expiration of the time period for which a motion is being requested. Motions must be in writing, and filed with the participating VA regional office that has jurisdiction over the claim, unless the case has been certified and transferred to the Board, in which case the motion must be filed with the Board. Motions must include the name of the participant, the applicable Department of Veterans Affairs file number; and an explanation as to why the extension request is being made.

(Authority: 38 U.S.C. 501(a))

§ 20.1510 Rule 1510. Termination of the initiative.

VA may terminate the Initiative at any time. In the event of such termination, VA will notify participants and their representatives in writing and inform them that any covered claims will be processed from the date of termination in the same manner as if the participant had not elected to participate in the Initiative.

(Authority: 38 U.S.C. 501(a))

[FR Doc. E8–8099 Filed 4–15–08; 8:45 am]
BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM81

Elimination of Co-Payment for Weight Management Counseling

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department of Veterans Affairs (VA) medical regulations concerning co-payments for inpatient hospital care and outpatient medical care. More specifically, it would designate weight management counseling (individual and group sessions) as a service that is not subject to co-payment requirements. The intended effect of this proposed rule is to increase participation in weight management counseling by removing the co-payment barrier. This proposed rule would also amend the medical regulations by making nonsubstantive changes to correct references to statutory provisions.

VA is also using direct final rulemaking for this action because we expect that there will be no significant adverse comments on the rule. (See RIN 2900–AM59). If no significant adverse comments are received, VA will confirm the effective date of the direct final rule and withdraw this proposed rule. If significant adverse comments are received, VA will withdraw the direct final rule and proceed with rulemaking on this proposed rule. A subsequent **Federal Register** document will be published to announce VA's action.

DATES: Written comments must be received on or before May 16, 2008.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to the Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AM81—Elimination of Co-payment for Weight Management Counseling." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (this is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy, Chief Business Office (16), Veterans Health Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254–0384 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document proposes to amend VA's "Medical" regulations, which are set forth at 38 CFR part 17 (referred to below as the regulations), to eliminate co-payments for weight management counseling (individual and group sessions).

A large number of veterans using VA medical facilities are overweight (body mass index of 25–29.9) or obese (body mass index of 30 or higher). Among male veterans using VA medical facilities in 2000, 40 percent were classified as overweight and 33 percent were classified as obese. Among female veterans using VA medical facilities in 2000, 31 percent were classified as overweight and 37 percent were classified as obese.

Poor diet and physical inactivity are rapidly overtaking smoking as the leading preventable cause of morbidity and mortality in the United States. Further, most of the morbidity and mortality related to poor diet and physical inactivity can be attributed to excess weight. However, even modest weight loss and increased physical activity can result in improved health outcomes, especially for individuals with diabetes or likely to get diabetes, a highly prevalent condition among veterans seeking healthcare at VA facilities. Being overweight or obese are also conditions clearly associated with coronary heart disease (CHD), CHD risks (hypertension, hyperlipidemia), certain cancers, gallbladder disease, obstructive sleep apnea, osteoarthritis, and all-cause mortality. Consequently, the health care costs for obesity-associated conditions throughout the United States are substantial with estimates of the total annual expenditures in the United States consisting of as much as $107.2 billion in 2006 dollars.

To combat the effects of being overweight or obese, VA has established "Managing Overweight/Obesity for Veterans Everywhere!" (MOVE!). This is a comprehensive, evidence-based weight management program that consists of both individual and group counseling.

Currently, VA regulations require many veterans to agree to make co-payments as a condition for participation in the *MOVE!* program. However, field providers report that co-payments are a significant barrier to participation in the counseling program. The co-payment requirement is estimated to generate approximately $1,001,294 annually. However, we believe that not imposing co-payments would be clearly cost effective based on the conclusion that the costs of healthcare for overweight and obese individuals become significantly lower as they lose weight. Accordingly, we propose to eliminate co-payments for weight management counseling.

The *MOVE!* program is based primarily upon the National Institutes of Health/National Heart, Lung, and Blood Institute's *Clinical Guidelines for the Identification, Evaluation, and Treatment of Overweight and Obesity* and is consistent with the weight management recommendations of the U.S. Preventive Services Task Force, supported by the Agency for Healthcare Research and Quality in the Department of Health and Human Services. An Executive Council consisting of federal weight management experts and

external expert advisors reviewed *MOVE!* and declared the *MOVE!* program to be consistent with current medical guidance and recommendations for weight management.

MOVE! became widely implemented across VA facilities as a standard clinical program over the past several years. The *MOVE!* program provides much of its care through frequent group sessions, a very effective and efficient format of weight management care. Effective treatment typically results in a 5–10 percent weight loss, which is associated with improvement in weight-related conditions such as hypertension, dyslipidemia, and diabetes. VA expects that elimination of the copayment associated with weight management treatment visits will facilitate continued patient engagement in treatment, resulting in better clinical outcomes. Over the long run, the loss in revenue from elimination of the copayment is expected to be offset by lower health care costs for weight-related conditions.

Limited research exists to fully understand the exact impact of a policy change such as this. While VA expects this change to be cost effective in the long run, VA will monitor results to assist in future decision-making concerning this and similar programs. VA will work with its research community to retrospectively evaluate the impact of this policy change.

This document proposes to amend 38 CFR 17.47(e)(2) by making nonsubstantive changes to correct references to statutory provisions. Section 17.47(e)(2) currently states that if a veteran provided inaccurate information on an application and is incorrectly deemed eligible for care under 38 U.S.C. 1710(a)(1) rather than section 1710(a)(2), VA shall retroactively bill the veteran for the applicable copayment. When § 17.47(e)(2) was initially promulgated, section 1710(a)(2) pertained to veterans who were not described in section 1710(a)(1) and who were therefore subject to the copayment requirements then set forth in section 1710(f). In 1996, section 1710(a) was amended by section 101(a) of Public Law 104–262. Under the amendments, veterans previously described in section 1710(a)(1) are now described in section 1710(a)(1) and (a)(2). Veterans previously described in section 1710(a)(2) are now described in section 1710(a)(3). The amendment to § 17.47(e)(2) corrects the references to these statutory provisions.

Administrative Procedure Act

Concurrent with this proposed rule, we also are publishing a separate, substantively identical direct final rule in the "Rules and Regulations" section of this **Federal Register**. The simultaneous publication of these documents will speed notice and comment rulemaking under section 553 of the Administrative Procedure Act should we have to withdraw the direct final rule due to receipt of significant adverse comments.

For purposes of the direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without change. If significant adverse comments are received, VA will publish a notice of receipt of significant adverse comments in the **Federal Register** withdrawing the direct final rule.

Under direct final rule procedures, unless significant adverse comments are received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, VA will publish a document in the **Federal Register** indicating that no adverse comments were received and confirming the date on which the final rule will become effective. VA will also publish a separate notice in the **Federal Register** withdrawing this proposed rule.

In the event the direct final rule is withdrawn because of significant adverse comments, VA can proceed with the rulemaking by addressing the comments received and publishing a final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the direct final rule will be treated as comments regarding the proposed rule. VA will consider such comments in developing a subsequent final rule. Likewise, significant adverse comments submitted regarding the proposed rule will be considered as comments regarding the direct final rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the proposed rule would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in the Executive Order.

Paperwork Reduction Act

This document does not contain any provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, or tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.009, Veterans Medical Care Benefits; and 64.012, Veterans Prescription Service.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: December 26, 2007.

James B. Peake,

Secretary of Veterans Affairs.

Editorial Note: This document was received at the Office of the Federal Register on April 11, 2008.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Amend § 17.108 by redesignating paragraphs (e)(12) and (e)(13) as paragraphs (e)(13) and (e)(14), respectively; and by adding a new paragraph (e)(12) to read as follows:

§ 17.108 Co-payments for inpatient hospital care and outpatient medical care.

* * * * *

(e) * * *

(12) Weight management counseling (individual and group);

* * * * *

§ 17.47 [Amended]

3. In § 17.47(e)(2), remove "under 38 U.S.C. 1710(a)(1) rather than § 1710(a)(2)" and add, in its place, "under 38 U.S.C. 1710(a)(1) or (a)(2) rather than 38 U.S.C. 1710(a)(3)".

[FR Doc. E8–8098 Filed 4–15–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2007–0008]; [92210–1117–0000 B4]

RIN 1018–AV07

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the San Bernardino Kangaroo Rat (Dipodomys merriami parvus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, changes to the proposed critical habitat revision, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our June 19, 2007, proposed revision to critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) under the Endangered Species Act of 1973, as amended (Act). In this document, we also propose to: Increase the size of proposed critical habitat Unit 1 (Santa Ana River Wash), and add two new proposed units: Unit 4 (Cable Creek Wash) and Unit 5 (Bautista Creek). In total, we are adding approximately 1,579 acres (ac) (638 hectares (ha)), which are currently designated as critical habitat for this subspecies, to our proposed revision to critical habitat. We also announce the availability of the draft economic analysis (DEA) of the proposed revision of critical habitat and an amended required determinations section of the proposal. The DEA estimates potential costs attributed to the revised critical habitat designation (incremental costs) to be approximately $71.2 million in present value terms using a 3 percent discount rate over a 23-year period in areas proposed as critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the original proposed revision of critical habitat, the additions to revised critical habitat proposed in this document, the associated DEA, and the amended required determinations section. Comments previously submitted on this rulemaking do not need to be resubmitted, as they will be incorporated into the public record and fully considered when preparing our final determination.

DATES: We will accept comments received or postmarked on or before May 16, 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–AV07; 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: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760/431–9440; facsimile 760/431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revision to critical habitat for the San Bernardino kangaroo rat published in the **Federal Register** on June 19, 2007 (72 FR 33808), the additions to revised critical habitat proposed in this document, the DEA of the proposed revised designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), specifically the benefits of excluding or the benefits of including any particular area as critical habitat.

(2) *Specific information on:*

- The amount and distribution of San Bernardino kangaroo rat habitat,
- Areas occupied by the subspecies at the time of listing that contain features essential for the conservation of the subspecies we should include in the designation and why, and
- Areas not occupied by the subspecies at the time of listing are essential to the conservation of the subspecies and why.

(3) Specific information on dispersal areas important for habitat connectivity, their role in the conservation of the subspecies, and why such areas should or should not be included in the critical habitat designation.

(4) Our revision of criteria used to identify critical habitat, our proposed addition of areas to critical habitat Unit 1, and the proposed addition of Units 4 and 5 as described in this notice (see Changes to Proposed Critical Habitat section below).

(5) Our proposed exclusions totaling 2,544 ac (1,029 ha) of San Bernardino kangaroo rat habitat and whether the benefits of excluding these areas would outweigh the benefits of including these areas under section 4(b)(2) of the Act (see the Exclusions Under Section 4(b)(2) of the Act section of the June 19, 2007, proposed rule (72 FR 33808) for a detailed discussion).

(6) Any areas included in the proposed revision of critical habitat that are covered by existing or proposed conservation or management plans that we should consider for exclusion from the final designation under section 4(b)(2) of the Act. We specifically request information on any operative or draft Habitat Conservation Plans for the San Bernardino kangaroo rat that have been prepared under section 10(a)(1)(B) of the Act, as well as any other management or conservation plan or agreement that benefits the kangaroo rat or its essential physical and biological features.

(7) Specific information regarding the current status of plan implementation for the following management plans: the Woolly-Star Preserve Area Management Plans; the Former Norton Air Force Base Conservation Management Plan; the Cajon Creek Habitat Conservation Management Area Habitat Enhancement and Management Plan; and Western Riverside Multiple Species Habitat Conservation Plan.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed revised critical habitat.

(9) Information on the extent to which any Federal, State, and local environmental protection measures we reference in the DEA may have been adopted largely as a result of the subspecies' listing.

(10) Information on whether the DEA identifies all Federal, State, and local costs and benefits attributable to the proposed revision of critical habitat, and information on any costs or benefits that we have overlooked.

(11) Information on the economic costs and benefits associated with the proposed additions to revised critical habitat announced in this document.

(12) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes likely if we designate revised critical habitat.

(13) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the revised designation of critical habitat.

(14) Information on areas that the revised critical habitat designation could potentially impact to a disproportionate degree.

(15) Any foreseeable economic, national security, or other impacts resulting from the proposed revised designation and, in particular, any impacts on small entities, and information on the benefits of including or excluding areas that exhibit these impacts.

(16) Information on whether the DEA appropriately identifies all costs that could result from the proposed revised designation.

(17) Information on any quantifiable economic benefits of the revised designation of critical habitat.

(18) Whether the benefits of excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(19) Economic data on the incremental costs of designating any particular area as revised critical habitat.

(20) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (72 FR 33808) during the initial comment period from June 19 to August 20, 2007, or the second comment period from December 11, 2007 to January 25, 2008 (opened to announce the public hearing held on January 10, 2008, in San Bernardino, California (72 FR 70284)), please do not resubmit them. These comments have been incorporated into the public record and will be fully considered in the preparation of our final determination.

You may submit your comments and materials concerning this proposed rule and draft economic analysis by one of the methods listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments or mailed comments that are not received or postmarked, respectively, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, 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.

Our final determination concerning revised critical habitat for the San Bernardino kangaroo rat will take into consideration all written comments we receive, oral or written comments we received at the public hearing on January 10, 2008, and any additional information we receive during all comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

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 U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the original proposed revision of critical habitat and the DEA on the Internet at *http://www.regulations.gov*, or by contacting the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On March 30, 2005, the Pacific Legal Foundation filed suit against the Service challenging our failure to provide adequate delineation, justification, or sufficient analysis of economic and other impacts in the designation of critical habitat for the San Bernardino kangaroo rat and 26 other species. On March 23, 2006, a settlement agreement was reached requiring the Service to propose to revise critical habitat for the San Bernardino kangaroo rat as appropriate. The settlement stipulated that on or before June 1, 2007, the Service was required to submit for publication to the **Federal Register** a proposed rule regarding any revisions to the designation of critical habitat, and that we must submit a final rule for

publication to the **Federal Register** on or before June 1, 2008. On June 19, 2007, we published a proposed rule to revise critical habitat for the San Bernardino kangaroo rat (72 FR 33808), identifying approximately 9,079 ac (3,674 ha) in Riverside and San Bernardino Counties, California, that meet the definition of critical habitat for this subspecies. Of this, we proposed to exclude approximately 2,544 ac (1,029 ha) of non-Federal land covered by the Woolly-Star Preserve Area Management Plans, the Former Norton Air Force Base Conservation Management Plan, the Cajon Creek Habitat Conservation Management Area Habitat Enhancement and Management Plan, and the Western Riverside County Multiple Species Habitat Conservation Plan from the final designation under section 4(b)(2) of the Act (see 72 FR 33808, "Exclusions Under Section 4(b)(2) of the Act" section of the June 19, 2007, proposed revision to critical habitat for details).

Section 3 of the Act defines critical habitat as (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a DEA of the June 19, 2007, proposed revision of critical habitat for the San Bernardino kangaroo rat (72 FR 33808). The DEA does not analyze potential economic impacts associated with the proposed additions to revised critical habitat announced in this document; however, an addendum to the DEA will be prepared for those areas. A final economic analysis will address all areas designated as revised critical habitat.

The intent of the DEA is to quantify the baseline and incremental economic impacts of all potential conservation efforts for the San Bernardino kangaroo rat. Baseline impacts include the potential economic impacts of all actions relating to the conservation of the San Bernardino kangaroo rat, including costs associated with sections 4, 7, and 10 of the Act, as well as those attributable to past efforts to conserve currently designated critical habitat. Baseline impacts also include the economic impacts of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation in the study area. Incremental impacts are those potential future economic impacts of conservation actions relating to the revised designation of critical habitat; these would not be expected to occur but for the designation of critical habitat.

For the purposes of the economic analysis and assessing effects on development, the proposed revised critical habitat was divided into upland and lowland areas. Lowland areas are occupied by the San Bernardino kangaroo rat year-round, at high densities of individuals. Because this is such a narrow endemic subspecies found in very few locations, any adverse modification decision would likely be coincident to a jeopardy determination for the same action. Thus, potential economic impacts from conservation efforts that may be necessary to avoid adverse modification of critical habitat within lowland areas are considered co-extensive with the impacts of the listing of the San Bernardino kangaroo rat and, for the purposes of the economic analysis, are considered to be baseline impacts of the revised designation.

The general conservation role of critical habitat designated within the upland habitat areas is to act as refuge for the San Bernardino kangaroo rat during flooding events that inundate the low-lying alluvial fans (i.e., the lowlands), which this subspecies usually occupies. Conservation efforts not otherwise necessary to avoid jeopardy to the San Bernardino kangaroo rat may be required in upland areas designated as critical habitat to ensure that the conservation role and functional ability of the areas are conserved. Therefore, incremental costs may be incurred in upland areas designated as critical habitat, as it is reasonable to expect that the Service may recommend avoidance and minimization efforts in such upland areas (up to and including complete avoidance) specifically to avoid the destruction or adverse modification of the critical habitat. Thus, for purposes of the economic analysis, potential economic impacts of conservation efforts that may result in reduced or no development in the upland areas designated as critical habitat are considered incremental impacts of the revised designation.

Baseline economic impacts are those impacts that result from listing and other conservation efforts for the San Bernardino kangaroo rat, including past costs incurred due to the existing designation of critical habitat. Baseline economic impacts consist of impacts to water conservation efforts and impacts due to potential constraints on development. Past baseline impacts total $14.5 million in present value terms using a 3 percent discount rate. Future baseline impacts are estimated to be $243.9 million in present value terms using a 3 percent discount rate over a 23-year period from 2008 to 2030, or $15.2 million annualized. Stated in other terms, these future baseline impacts are estimated to be approximately $342 million ($14.9 million annualized) in undiscounted dollars or approximately $145.8 million ($79.6 million annualized) in present value terms using a 7 percent discount rate.

The vast majority of incremental impacts attributed to the proposed revised critical habitat designation are due to potential constraints on development within upland areas. The projected number of housing units in upland areas of proposed revised critical habitat is 847. Assuming the potential constraints on development in the upland areas result in complete avoidance of these areas, the DEA estimates potential incremental economic impacts in areas proposed as revised critical habitat over a 23-year period from 2008 to 2030 to be $71.2 million in present value terms ($4.3 million annualized), using a 3 percent discount rate. These impacts are estimated to be approximately $99.6 million ($4.3 million annualized) in undiscounted dollars or approximately

$48.8 million ($26.3 million annualized) in present value terms using a 7 percent discount rate. A very small portion of incremental effects are attributed to water conservation activities in upland areas, approximately $90 annualized at a 3 percent discount rate. No incremental economic impacts are expected in areas proposed for exclusion from the revised critical habitat. The potential economic impacts in these areas are all considered to be baseline impacts (refer to Appendix A in DEA).

The economic analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). The economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The analysis measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. This information can be used by the decision-makers to assess whether the effects of the revised designation might unduly burden a particular group or economic sector.

Finally, the economic analysis looks retrospectively at costs that have been incurred since the date we listed the San Bernardino kangaroo rat as endangered (September 24, 1998; 63 FR 51005), and considers those costs that may occur in the years following the revised designation of critical habitat, with the timeframes for this analysis varying by activity. The baseline and incremental economic impacts of potential conservation efforts for the San Bernardino kangaroo rat are associated with the following activities: (1) Water conservation, (2) flood control, (3) urban development, (4) sand and gravel mining, (5) agricultural activities, and (6) off-road vehicle activities.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed rule, the additions to revised critical habitat proposed in this document, and our amended required determinations. The final designation may differ from the proposed rule based on new information we receive during the public comment periods. Our supporting record will reflect any new information used in making the final designation. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as revised critical habitat, provided such exclusion will not result in the extinction of the subspecies.

Changes to Proposed Revised Critical Habitat

Criteria Used To Identify Critical Habitat

In this document, we are advising the public of revisions we made to the criteria we used to identify critical habitat (as described in the June 19, 2007, proposed rule (72 FR 33808)). During the first and second comment periods for the proposed rule, we received significant comments from the public, including biologists familiar with the San Bernardino kangaroo rat, which lead us to reevaluate and revise the criteria used to identify critical habitat. Below, we present our revised "Criteria Used To Identify Critical Habitat" section, which replaces the "Criteria Used To Identify Critical Habitat" section provided in the June 19, 2007, proposed rule.

We are proposing to designate critical habitat for the San Bernardino kangaroo rat in areas we have determined to be occupied by the subspecies at the time of listing, and that contain the physical and biological features essential to the conservation of the subspecies. The physical and biological features are those primary constituent elements (PCEs) laid out in a specific spatial arrangement and quantity to support the life history functions essential for the conservation of this subspecies. Some designated lands contain all PCEs and support multiple life processes. Some lands contain only a portion of the PCEs necessary to support the particular biological value of that habitat to this subspecies.

We define occupied habitat as: (a) Those areas containing occurrence data prior to listing (1980 to 1998); (b) those areas containing occurrence data since the time of listing (1998 to present); and (c) areas adjacent to and between occurrence points that maintain habitat connectivity in one continuous patch of suitable habitat. As discussed in the Background section of the June 19, 2007, proposed rule (72 FR 33808), occurrences discovered since the listing of the subspecies in 1998 are within areas considered to be occupied by the subspecies at the time of listing (Santa Ana River, Lytle/Cajon Creek, and San Jacinto River washes).

In this proposed designation, we have focused primarily on core populations (i.e., areas where the subspecies has been repeatedly detected through live trapping) in undisturbed habitat in the Santa Ana River, Lytle/Cajon Creeks, and the San Jacinto River washes. We believe that protecting these three largest core populations is necessary for the conservation of the species. Protecting small, isolated, peripheral populations in areas of degraded habitat and those areas devoid of fluvial processes where detection of San Bernardino kangaroo rat has been sporadic is not essential for recovery as these populations are likely unsustainable. In defining core population boundaries, we included areas demographically disconnected from the three largest populations, but which may provide the subspecies with protection against demographically stochastic events (e.g., flooding in excess of a 100-year storm event that removes flood-plain terrace habitat, earthquakes, fires followed by erosion of adjacent slopes that bury occupied habitat) which could cause local extinctions in the larger units. These areas are occupied by the subspecies and likely contain self-sustaining populations, relatively undisturbed alluvial scrub habitat with largely unimpeded fluvial dynamics, the PCEs identified for the subspecies, and are important for the long-term conservation of the subspecies.

Utilizing 2005 aerial imagery and occurrence data to determine areas of occupancy, we delineated critical habitat on maps to include occupied, non-degraded alluvial fans, washes, floodplains, and adjacent upland areas containing the PCEs required by the San Bernardino kangaroo rat. We then made site visits with biologists considered to be experts on this subspecies and its habitat to confirm the presence of PCEs in the areas delineated on the maps. Areas determined not to contain any of the PCEs are not proposed as critical habitat. Because of the importance of upland habitat as a source of animals to repopulate wash areas following flood events, we include upland habitat containing one or more PCEs, and adjacent to occupied wash habitat in this proposed designation.

When determining the critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for the San Bernardino kangaroo rat. Areas

currently being used for sand/gravel mining operations (e.g., pits, staging areas) do not contain the physical and biological features essential to the conservation of the San Bernardino kangaroo rat. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any developed structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed critical habitat have been excluded by text in this rule and would not be designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the subspecies or physical and biological features in adjacent critical habitat.

Areas Proposed as Critical Habitat

In this document, we are proposing additional revisions to the area of critical habitat described in the June 19, 2007, proposed rule (72 FR 33808). During the first and second comment periods for the proposed rule, we received significant comments from the public, including biologists familiar with the San Bernardino kangaroo rat, on areas that are essential to the subspecies and should be included in the designation. As a result of these comments, new information received, and revision of the criteria used to identify critical habitat, we reevaluated the following areas: Mill Creek, Plunge Creek (including areas providing habitat connectivity of the Plunge Creek wash with the Santa Ana River wash), Cable Creek wash, and Bautista Creek. All of these areas are currently designated as critical habitat for the San Bernardino kangaroo rat (see 50 CFR 17.95(a); 67 FR 19812, April 23, 2002); however, we did not propose these areas as critical habitat in the June 19, 2007, proposed revision to critical habitat (73 FR 33808). Below we describe each area we reevaluated, explain why we did not include the area in the 2007 proposed rule, and explain why we are now proposing the area for inclusion in the revised designation of critical habitat.

Mill Creek

Mill Creek flows into and joins the Santa Ana River wash (Unit 1) in the eastern side of the unit. We did not include the Mill Creek area in the 2007 proposed rule (72 FR 33808), although we indicated that it was considered important to the subspecies by contributing fluvial dynamics to the Santa Ana River wash. At the time of the proposed revised rule, we had limited survey data indicating Mill Creek was sparsely occupied by the San Bernardino kangaroo rat. Furthermore, we determined this area contained large expanses of unsuitable habitat. As such, we did not include the majority of lower Mill Creek in the June 19, 2007 proposed revision to critical habitat.

During the public comment period, we received a number of comments highlighting the importance of Mill Creek as an area not only occupied by the San Bernardino kangaroo rat connected to and contiguous with the core population in the Santa Ana wash, but also containing the physical and biological features necessary for the long-term conservation of this subspecies. Upon receiving comments from the public about Mill Creek, we reevaluated our data in this area. Evidence of extensive burrowing activity observed by Service biologists indicates this area is occupied by kangaroo rats, and live-trapping confirms that Mill Creek is occupied by the San Bernardino kangaroo rat subspecies. We agree that the reach of Mill Creek occupied by the San Bernardino kangaroo rat to its confluence with the Santa Ana River is important to the recovery of the subspecies as it is the only large stretch of contiguous, occupied habitat for the San Bernardino kangaroo rat within Unit 1 that is not fragmented by development (e.g., roads, aggregate mining pits). Further, we agree that the habitat at Mill Creek is connected to and contiguous with habitat supporting the core population in Unit 1, and therefore, San Bernardino kangaroo rats inhabiting Mill Creek are part of the Santa Ana River wash core population.

We also received comments about the importance of Mill Creek as a source of sediment through natural fluvial dynamics to the majority of the Santa Ana River wash (Unit 1). Existing infrastructure (e.g., levees, culverts, concrete-lined channels, bridge abutments and other fill) affects the function of the Santa Ana River and its tributaries within the historic and current range of this subspecies. As a result, the historic flood plain dynamics within the upper Santa Ana River watershed have been permanently altered (MEC 2000, pp. 175–176). Periodic flooding provides natural scour and sediment deposition, decreases vegetation density and cover, and naturally maintains the alluvial sage scrub that supports this subspecies. Mill Creek is the only remaining source of alluvial sediments remaining within Unit 1 that has not been significantly altered by flood control structures, water diversions, or other activities. Although the Santa Ana River is incised just downstream from its confluence with Mill Creek, the flood plain elevations downstream (e.g., downstream of Opal Street in Mentone) allow overbank scour and sediment deposition during even small-to moderate-intensity storms. The periodic deposition of sediments from Mill Creek helps to naturally maintain the soil and alluvial fan sage scrub (i.e., the PCEs upon which the survival and recovery of the San Bernardino kangaroo rat in Unit 1 depend) within critical habitat along the Santa Ana River as suitable habitat to support the core population of San Bernardino kangaroo rats within this unit. Because of the importance of Mill Creek, we are proposing to include 388 ac (157 ha) of Mill Creek in the revision to critical habitat for proposed Unit 1. This area is currently designated as critical habitat as part of Unit 1 (see 50 CFR 17.95(a); 67 FR 19812, April 23, 2002).

Plunge Creek

Plunge Creek is located north of the main stem of the Santa Ana River in Unit 1 and is largely isolated from the core population of San Bernardino kangaroo rats in the wash by sand and gravel mining operations. A portion of Plunge Creek was included in the June 19, 2007, proposed revision to critical habitat, but no critical habitat connection between this area of Plunge Creek and other portions of proposed Unit 1 was included in the proposal. We did not propose revised critical habitat connecting Plunge Creek to other critical habitat areas in proposed Unit 1 because, although lands in this area are managed by the Bureau of Land Management (BLM), the BLM is considering the revision of their South Coast Resource Management Plan and an exchange of land within their existing Area of Critical Environmental Concern (ACEC) for lands that are privately owned within the Santa Ana River wash. Should this exchange occur, we anticipate that the Upper Santa Ana River Habitat Conservation Plan (USAR HCP, also known as "Plan B") would put forward. The land exchange would be done to facilitate aggregate mining, water conservation, roadway improvements, and other activities in areas that are now within the ACEC, while other, less-disturbed habitat areas for the San Bernardino kangaroo rat would be conserved through the implementation of the USAR HCP. Although we have been working with the BLM and associated stakeholders on the land exchange for many years, we have not yet been asked by the BLM to formally consult with them on this

action. However, during collaboration with the BLM and stakeholders in the USAR HCP, we had considered areas where future mining may be proposed, and determined in our June 19, 2007, proposed revision to critical habitat that these areas should not be included in the proposed revision at that time.

We received significant comment from the public highlighting the importance of Plunge Creek to the conservation of the San Bernardino kangaroo rat. Commenters were concerned that proposed revision to critical habitat around Plunge Creek (which is north of existing and proposed mining pits) did not connect to critical habitat in the Santa Ana River mainstem south of these pits. Plunge Creek is extensively modified upstream of Greenspot Road by levees and the bridge crossing the creek on Greenspot Road, and the creek at Orange Street is completely channelized and diverted from its historic connection with the Santa Ana River. However, significant sediment deposition occurs immediately downstream of the Greenspot Road bridge and provides for habitat renewal in portions of the adjacent Woolly-Star Preserve Area and the reach of Plunge Creek from Greenspot Road to its diversion at Orange Street. This area of relatively undisturbed alluvial scrub is known to be occupied by the San Bernardino kangaroo rat. Commenters, including biologists familiar with the San Bernardino kangaroo rat, stated that it is important for the persistence of the subspecies in Unit 1 that the demographic and genetic connectivity of populations in Plunge Creek and the Santa Ana wash be conserved. We agree that without a habitat connection in Unit 1 to provide for demographic and genetic exchange between San Bernardino kangaroo rats in Plunge Creek and the main stem area, the population of San Bernardino kangaroo rat in Plunge Creek is at risk of local extirpation. Due to the importance of Plunge Creek and connectivity to the remainder of the unit, we are now proposing to include approximately 265 ac (107 ha) of habitat that was occupied at the time of listing and currently occupied in proposed Unit 1. This additional area, which contains the physical and biological features essential to the conservation of the subspecies, would allow for connectivity of Plunge Creek and the core population in the Santa Ana River wash. This area is currently designated as critical habitat as part of Unit 1 (see 50 CFR 17.95(a); 67 FR 19812, April 23, 2002).

Cable Creek Wash

The Cable Creek wash is located northeast of the Lytle/Cajon Creek wash (within current Unit 2) on the opposite side of Interstate 215 (I–215). This wash, although occupied, is isolated from proposed Unit 2 by I–215, flood control structures, and other development. Cable Creek is channelized where it approaches the freeway. The concrete channel eventually crosses underneath the I–215 to flow into the Lytle/Cajon wash, but the channel precludes the movement of individual San Bernardino kangaroo rats between these areas. Hence, any genetic or demographic connection between San Bernardino kangaroo rats in Cable Creek wash and the Lytle/Cajon wash is likely minimal to non-existent. We did not propose the Cable Creek wash in the June 19, 2007, proposed revision to critical habitat because of the disconnect between this population at Cable Creek and the larger population of San Bernardino kangaroo rats at Lytle/Cajon Creek.

During the comment periods for the San Bernardino kangaroo rat proposed critical habitat revision, we received significant comment from the public about Cable Creek wash. Commenters stated that this wash contains the essential physical and biological features, and retains fluvial dynamics, and is one of the few areas of occupied San Bernardino kangaroo rat habitat within the remaining range of the subspecies. Further, this area appears to be large enough to support a population of San Bernardino kangaroo rats indefinitely, despite its disconnection from the core population in the Lytle/Cajon Creek wash. We agree that Cable Creek contains quality San Bernardino kangaroo rat habitat and the repeated positive survey results suggest this area supports a population of this subspecies. We also received comments suggesting that this area could be important for the long-term conservation of this subspecies in the future if population levels in the core area of the Lytle/Cajon wash were to decrease due to catastrophic events. The demographic isolation of Cable Creek from Lytle/Cajon Creek occurred relatively recently on an evolutionary time scale, and therefore, we agree that the Cable Creek wash population could be utilized to augment recovery of the Lytle/Cajon wash population. Based on these comments, we revised our criteria identifying critical habitat to include areas disconnected from core population areas that we determine may be important for the long-term conservation of the subspecies, and we are proposing to include approximately 483 ac (195 ha) of land in the Cable Creek wash in a new critical habitat Unit 4. This area is currently designated as critical habitat as part of Unit 2 (see 50 CFR 17.95(a); 67 FR 19812, April 23, 2002).

Bautista Creek

Bautista Creek drains into the San Jacinto River wash from the south, flowing into the area supporting the core population of San Bernardino kangaroo rats within the San Jacinto River (proposed Unit 3). Bautista Creek has been channelized approximately 2 miles (3.2 kilometers) downstream of the San Bernardino National Forest boundary and now flows for several miles through a 4-sided concrete box channel to its confluence with San Jacinto Creek. This steep-sided channel effectively isolates San Bernardino kangaroo rats in Bautista Creek from those in San Jacinto Creek. Minimal genetic connectivity may exist between the Bautista Creek and San Jacinto River populations by way of highly disturbed, upland agricultural fields along the length of the concrete channel (if those agricultural areas are occupied at some low level by the subspecies). Demographic connectivity of the two populations through these highly disturbed agricultural areas is unlikely. Although unlikely, an occasional individual may survive being washed downstream through the channel during a high flow event, but such an event is likely so rare as to be relatively meaningless to the population in terms of demographic or genetic exchange between individual animals in Bautista and San Jacinto creeks. It is also unlikely that San Bernardino kangaroo rats could successfully migrate from the San Jacinto upstream through the concrete channel to the Bautista Creek area. Because of this, we did not include Bautista Creek in the June 19, 2007, proposed revision to critical habitat.

We received significant comment during the public comment periods about the unchannelized reaches of Bautista Creek that were designated in the April 23, 2002, final rule as critical habitat (67 FR 19812). These comments focused on the unimpeded fluvial dynamics that maintain existing physical and biological features and occupancy by the San Bernardino kangaroo rat in this area. It was noted that given the extent and quality of habitat in this area of Bautista Creek, the population of San Bernardino kangaroo rats in Bautista Creek is likely self-sustaining in the long-term despite the lack of habitat connectivity with the San Jacinto River wash. We agree that the unchannelized portion of Bautista Creek

is occupied as documented through live-trapping results, and that this area retains fluvial dynamics maintaining the physical and biological features required by the San Bernardino kangaroo rat. We also received comments suggesting the Bautista Creek population is important for the long-term conservation of the San Bernardino kangaroo rat, as it provides a safeguard against population declines and local extinction in the San Jacinto unit (proposed Unit 3). The demographic isolation of Bautista Creek from the San Jacinto River occurred relatively recently on an evolutionary time scale, and therefore, we agree that the Bautista Creek population could be utilized to augment recovery of the San Jacinto River wash population. The comments we received also highlighted the importance of conserving the Bautista Creek area as it represents the southernmost extent of the range for San Bernardino kangaroo rat. Based in part on these comments, we revised our criteria identifying critical habitat to include disconnected areas that we determine are important for the long-term conservation of the subspecies, and we are proposing to include approximately 443 ac (180 ha) of land in Bautista Creek in a new proposed Unit 5. This area is currently designated as critical habitat as part of Unit 3 (see 50 CFR 17.95(a); 67 FR 19812, April 23, 2002).

In total, we are adding approximately 1,579 ac (638 ha) of Federal and private land to the June 19, 2007, proposed revision to critical habitat for the San Bernardino kangaroo rat (Table 1). These proposed areas are not analyzed in the DEA that is now out for public review, but will be analyzed in an addendum and, if designated, will be addressed in the final economic analysis.

TABLE 1.—LAND OWNERSHIP, AREAS PROPOSED AS REVISED CRITICAL HABITAT IN THE JUNE 19, 2007 PROPOSED RULE (72 FR 33808), ADDITIONAL AREAS PROPOSED IN THIS DOCUMENT, AREAS PROPOSED FOR EXCLUSION FROM THE FINAL CRITICAL HABITAT DESIGNATION UNDER SECTION 4(B)(2) OF THE ACT

[Area estimates reflect all land within revised proposed critical habitat unit boundaries]

Critical habitat unit	Land ownership	Proposed critical habitat (72 FR 33808)	Additions to proposed critical habitat	Areas proposed for exclusion under section 4(b)(2) of the act
1. Santa Ana River Wash, San Bernardino County	BLM [1]	559 (226)	184 (74)	00 (00)
	Local [2]	268 (109)	00 (00)	268 (109)
	Private	2,797 (1,132)	469 (190)	742 (300)
Subtotal		3,624 (1,467)	653 (264)	1,010 (409)
2. Lytle/Cajon Creek Wash, San Bernardino County	USFS [3]	89 (36)	00 (00)	00 (00)
	Private	4,597 (1,860)	00 (00)	1,271 (514)
Subtotal		4,686 (1,896)	00 (00)	1,271 (514)
3. San Jacinto River Wash, Riverside County	Water District [4]	506 (205)	00 (00)	00 (00)
	Local Flood [5]	94 (38)	00 (00)	94 (38)
	Private	169 (68)	00 (00)	169 (68)
Subtotal		769 (311)	00 (00)	263 (106)
4. Cable Creek Wash, San Bernardino County	Private	00 (00)	483 (195)	00 (00)
Subtotal		00 (00)	483 (195)	00 (00)
5. Bautista Creek, Riverside County	USFS [3]	00 (00)	73 (30)	00 (00)
	USFS Inholding	00 (00)	38 (15)	00 (00)
	Local Flood [5]	00 (00)	4 (2)	00 (00)
	Private	00 (00)	328 (133)	00 (00)
Subtotal		00 (00)	443 (180)	00 (00)
Total		9,079 (3,674)	1,579 (638)	2,544 (1,029)

[1] BLM = Bureau of Land Management.
[2] Local = Local Reuse Authority.
[3] USFS = U.S. Forest Service.
[4] Water District = Eastern Municipal Water District and Lake Hemet Municipal Water District.
[5] Local Flood = Riverside County Flood Control.

Revised Unit Descriptions

Below, we present a revised unit description for San Bernardino kangaroo rat proposed critical habitat Unit 1, which replaces the unit description presented in the June 19, 2007, proposed rule (72 FR 33808). We also present unit descriptions for newly proposed Units 4 and 5. The unit descriptions for proposed Units 2 and 3 presented in the June 19, 2007, proposed rule remain unchanged.

Unit 1: Santa Ana River Wash

Unit 1 consists of approximately 4,277 ac (1,731 ha) and is located in San Bernardino County. This unit includes the Santa Ana River and portions of City, Plunge, and Mill Creeks. The area includes lands within the cities of San Bernardino, Redlands, and Highland. Although Seven Oaks Dam (northeast of Unit 1) impedes sediment transport and reduces the magnitude, frequency, and extent of flood events from the Santa Ana River, the system still retains partial fluvial dynamics because Mill Creek is not impeded by a dam or debris

basin. This proposed critical habitat unit was occupied at the time of listing, is currently occupied, and contains all of the PCEs (PCEs 1, 2, and 3) in the appropriate quantity and spatial arrangement essential for the conservation of the subspecies. Additionally, this unit contains the highest densities of San Bernardino kangaroo rat in the Santa Ana wash. The physical and biological features contained within this unit may require special management considerations or protection to minimize impacts associated with flood control operations, water conservation projects, sand and gravel mining, and urban development.

Approximately 742 ac (300 ha) of Unit 1 occurs within the Woolly-Star Preserve Area (WSPA), a section of the flood plain downstream of Seven Oaks Dam that was preserved by the flood control districts of Orange, Riverside, and San Bernardino Counties. The WSPA was established in 1988 by the U.S. Army Corps of Engineers (ACOE) to minimize the effects of Seven Oaks Dam on the federally endangered plant, *Eriastrum densifolium* ssp. *sanctorum* (Santa Ana River woolly-star). This area of alluvial fan scrub in the wash near the low-flow channel of the river was designated for preservation because these sections of the wash were thought to have the highest potential to maintain the hydrology necessary for the periodic regeneration of early phases of alluvial fan sage scrub. A 1993 Management Plan for the Santa Ana River WSPA has been completed, and a draft multi-species habitat management plan (MSHMP) for WSPA lands, which includes protection for the San Bernardino kangaroo rat, is to be completed as an additional conservation measure pursuant to our December 19, 2002, biological opinion on operations for Seven Oaks Dam (Service 2002b, p. 8). As a result, we are proposing to exclude approximately 742 ac (300 ha) of WSPA lands that fall within the proposed revision to critical habitat from the final revised critical habitat designation based on the benefits to the subspecies provided by these plans (see the Exclusions Under section 4(b)(2) of the Act section of the June 19, 2007, proposed rule (72 FR 33808) for a detailed discussion).

In 1994, the BLM designated three parcels in the Santa Ana River, a total of approximately 760 ac (305 ha), as an Area of Critical Environmental Concern (ACEC). One parcel is located south of the Seven Oaks barrow pit, another is farther west and south of Plunge Creek, and the third is located farther west between two large mining pits. The primary goal of this ACEC designation is to protect and enhance the habitat of federally listed plant species occurring in the area while providing for the administration of valid existing water conservation rights. Although the establishment of this ACEC is important in regard to conservation of sensitive species and communities in this area, the administration of existing water-conservation rights conflicts with the BLM's ability to manage their lands for the San Bernardino kangaroo rat. Existing rights include a withdrawal of Federal lands for water conservation through an act of Congress on February 20, 1909 (Pub. L. 248, 60th Cong., 2nd sess.). The entire ACEC is included in this withdrawn land and may be used for water conservation measures such as the construction of percolation basins. Although the BLM is coordinating with the Service to conserve San Bernardino kangaroo rat habitat, at this time we do not consider these lands to be managed for the benefit of the San Bernardino kangaroo rat or the physical and biological features essential to the conservation of the species. We are not proposing to exclude these lands from the final revised critical habitat designation.

We are currently coordinating with the BLM, ACOE, San Bernardino Valley Conservation District, Cemex Construction Materials, Robertson's Ready Mix, and other local interests on a proposed exchange of Federal and private lands and the development of the USAR HCP. The goal of the USAR HCP is to consolidate a large block of alluvial fan scrub occupied by three federally endangered species (the San Bernardino kangaroo rat, *Eriastrum densifolium* ssp. *sanctorum*, and *Dodecahema leptoceras* (slender-horned spineflower)) and one federally threatened species (the coastal California gnatcatcher (*Polioptila californica californica*)). The area under consideration includes the majority of the Santa Ana wash from just downstream of the confluence of Mill Creek with the Santa Ana River to Alabama Street. While the goal of this effort is to benefit the San Bernardino kangaroo rat through the establishment of preserve lands that will be managed for this subspecies and other listed species, we are still in the development phase of this HCP. We are not proposing to exclude any lands within the proposed Santa Ana River Wash Conservation Area from the final revised critical habitat designation.

Approximately 268 ac (109 ha) of occupied habitat in the Santa Ana River wash has been set aside for conservation in perpetuity by the U.S. Air Force as part of on-base site remediation efforts at the former Norton Air Force Base (AFB) in San Bernardino, California. These areas are managed specifically for the San Bernardino kangaroo rat and *Eriastrum densifolium* spp. *sanctorum* pursuant to the Former Norton Air Force Base Conservation Management Plan (CMP) completed in March 2002. We are proposing to exclude these 268 ac (109 ha) from the final revised critical habitat designation based on benefits provided to San Bernardino kangaroo rat habitat under the CMP (see Proposed Rule (72 FR 33808), Exclusions Under section 4(b)(2) of the Act section for a detailed discussion).

Unit 4: Cable Creek Wash

Unit 4 consists of approximately 483 ac (195 ha) and is located in San Bernardino County. This unit encompasses the Cable Creek alluvial flood plain from the mouth of Cable Canyon to Interstate 215 (I–215) where the creek becomes channelized. Because Cable Creek is not impeded by a dam or debris basin, the fluvial dynamics necessary to maintain the PCEs of San Bernardino kangaroo rat critical habitat remain in this unchannelized portion of Cable Creek. This proposed critical habitat unit was occupied at the time of listing, is currently occupied, and contains all of the PCEs (PCEs 1, 2, and 3) in the appropriate quantity and spatial arrangement essential for the conservation of the subspecies. Additionally, this unit contains a likely self-sustaining population of San Bernardino kangaroo rats that may be important for the long-term conservation of the subspecies. This unit is demographically isolated from the core population of the subspecies in the Lytle/Cajon wash (proposed Unit 2). A stochastic event causing dramatic population decline or local extinction in proposed Unit 2 may have little effect on proposed Unit 4. In such a case, the population in proposed Unit 4 could serve as a source of individuals for repopulating proposed Unit 2. The physical and biological features contained within this unit may require special management considerations or protection to minimize impacts associated with flood control operations, water conservation projects, sand and gravel mining, and urban development.

Unit 5: Bautista Creek

Unit 5 consists of approximately 443 ac (180 ha) and is located in Riverside County. This unit includes known occupied habitat from the unchannelized reach of Bautista Creek (i.e., from the existing instream mining

operation to upstream areas where the grade of the creek precludes the formation of alluvial terraces or braids). This unit represents the southernmost extent of the San Bernardino kangaroo rat's current range. The wash system in upper Bautista Creek still retains fluvial dynamics because it is not impeded by a dam, debris basin, or concrete channelization. This proposed critical habitat unit was occupied at the time of listing, is currently occupied, and contains all of the PCEs (PCEs 1, 2, and 3) in the appropriate quantity and spatial arrangement essential for the conservation of the species. This unit contains agricultural areas that could be occupied at low densities by this subspecies (PCE 3). Additionally, this unit contains a likely self-sustaining population of San Bernardino kangaroo rats that may be important for the long-term conservation of the subspecies. This unit is demographically isolated from the core population of the subspecies in the San Jacinto Wash (proposed Unit 3). Given the current status of the San Bernardino kangaroo rat and degradation in areas currently designated as critical habitat that we are not proposing as revised critical habitat, it is important for the conservation of the San Bernardino kangaroo rat that natural fluvial processes in occupied habitat are maintained. A stochastic event could cause a dramatic population decline or local extinction in either proposed Unit 3 or Unit 5. In such a case, through relocation for the purposes of recovery, the population in proposed Unit 5 could serve as a source of individuals for repopulating proposed Unit 3, and vice versa. The physical and biological features contained within this unit may require special management considerations or protection to minimize impacts associated with agricultural activities, sand and gravel mining, and urban development.

Required Determinations—Amended

In our June 19, 2007, proposed rule (72 FR 33808), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we revise our required determinations concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act, and E.O. 12630 (Takings).

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our DEA of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed revision of critical habitat for the San Bernardino kangaroo rat would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as residential and commercial development. We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the San

Bernardino kangaroo rat. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In the DEA of the proposed revision to critical habitat, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revision to critical habitat for the San Bernardino kangaroo rat. The DEA is based on the estimated incremental impacts associated with the proposed rulemaking as described in section 3 of the DEA. The DEA evaluates the potential for economic impacts related to activity categories including water conservation, flood control, and development. Impacts of conservation activities are not anticipated to affect small entities in the following categories: fire management on Federal lands; invasive, nonnative plant species management on Federal lands; recreation management on Federal lands; and surveying, monitoring, and other activities on Federal lands. Land managers that may be impacted by the proposed rule include the BLM, the San Bernardino County Flood Control District (SBCFCD), and private landowners. Of the entities that are likely to bear incremental impacts, there are no entities identified as small businesses, small organizations, or small government jurisdictions. The Federal agency, BLM, and the special district, SBCFCD, do not meet the criteria for a small business. Individual private landowners in the areas proposed as revised San Bernardino kangaroo rat critical habitat are not considered small businesses. Please refer to the DEA (Appendix C) of the proposed revision to critical habitat for a more detailed discussion of potential economic impacts.

In summary, we have considered whether this proposed rule to revise critical habitat would result in a significant economic effect on a substantial number of small entities. For the above reasons and based on currently available information, we certify that the revised designation of critical habitat for the San Bernardino kangaroo rat will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed revision to critical habitat for the San Bernardino kangaroo rat is not considered a significant regulatory action under E.O. 12866. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. The DEA finds that none of these criteria are relevant to this analysis. Thus, based on information in the DEA (Appendix C), energy-related impacts associated with San Bernardino kangaroo rat conservation activities within the areas included in the proposed revision to critical habitat are not expected. As such, the proposed revision to critical habitat is not expected to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under section 7 of the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. As discussed in the DEA, anticipated future impacts in areas proposed for final designation as critical habitat will be borne by the Federal Government and SBCFCD; in areas proposed for exclusion from the final designation, the total anticipated future impacts are not attributable to the designation of critical habitat. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. The SBCFCD is also not considered to a small entity because it services a population exceeding the criteria for a "small entity." As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing revised critical habitat for the San Bernardino kangaroo rat in a takings implications assessment. The takings implications assessment concludes that this proposed revision to critical habitat for the San Bernardino kangaroo rat does not pose significant takings implications.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* or by contacting the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this rulemaking are the staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 72 FR 33808, June 19, 2007, as follows:

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.

2. Critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in § 17.95(a), which was proposed to be revised on June 19, 2007, at 72 FR 33808, is proposed to be amended by:

a. Revising the introductory text of paragraph (5) and Map 1;

b. Retaining the proposed introductory text of paragraph (6);

c. Revising paragraph (6)(i), the introductory text of paragraph (6)(ii), and Map 2;

d. Adding paragraphs (9), (9)(i), (9)(ii), and Map 5; and

e. Adding paragraphs (10), (10)(i), (10)(ii), and Map 6, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

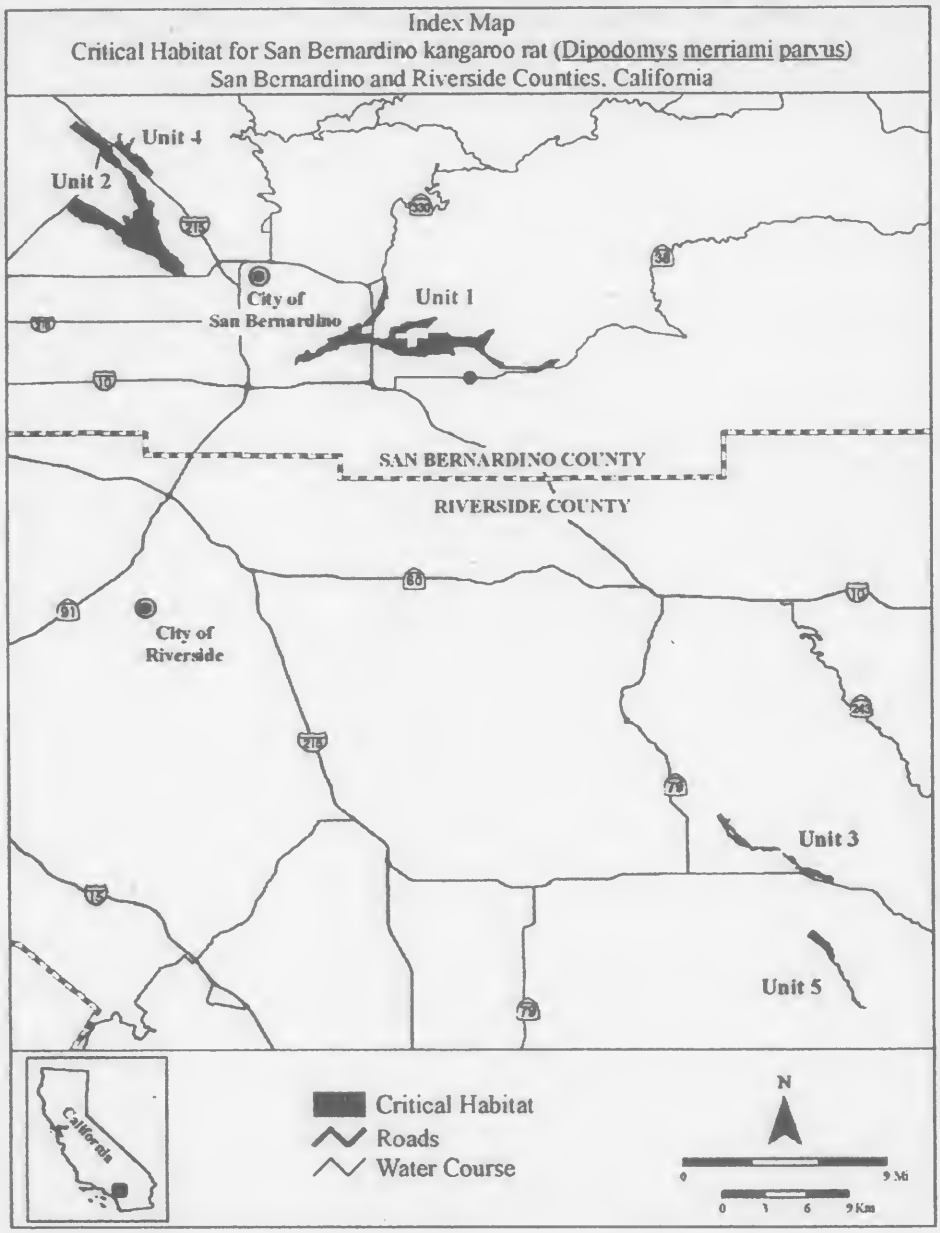
* * * * *

San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*)

* * * * *

(5) Note: Index map of critical habitat units for the San Bernardino kangaroo rat follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(6) Unit 1: Santa Ana River Wash, San Bernardino County, California. From USGS 1:24,000 quadrangles San Bernardino North and Devore.

(i) Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 482590, 3777012; 482552, 3776943; 482558, 3776715; 482692, 3776286; 482707, 3776201; 482717, 3775426; 482568, 3775426; 482435, 3775170; 482428, 3774953; 482444, 3774750; 482466, 3774716; 482231, 3774477; 482161, 3774375; 481828, 3773959; 481701, 3773548; 481670, 3773552; 481632, 3773557; 481544, 3773563; 481307, 3773467; 481190, 3773483; 481147, 3773505; 481135, 3773507; 481097, 3773509; 481019, 3773481; 480850, 3773325; 480850, 3773289; 480835, 3773289; 480834, 3772979; 480834, 3772974; 480837, 3772974; 480837, 3772904; 481087, 3772866; 481311, 3772937; 481467, 3772911; 481609, 3772957; 481612, 3772958; 481659, 3772966; 481687, 3772961; 481648, 3772551; 481660, 3772547; 481827, 3772547; 482106, 3772547; 482223, 3772495; 482278, 3772489; 482335, 3772483; 482363, 3772483; 482446, 3772484; 482448, 3772484; 482448, 3772482; 482492, 3772485; 482495, 3772486; 482498, 3772486; 482511, 3772489; 482541, 3772494; 482546, 3772497; 482552, 3772499; 482567, 3772509; 482587, 3772519; 482608, 3772536; 482613, 3772539; 482644, 3772563; 482698, 3772609; 482754, 3772665; 482775, 3772683; 482788, 3772698; 482815, 3772725; 482846, 3772767; 482862, 3772784; 482876, 3772777; 482894, 3772767; 482925, 3772752; 482946, 3772739; 482958, 3772730; 482985, 3772705; 482993,

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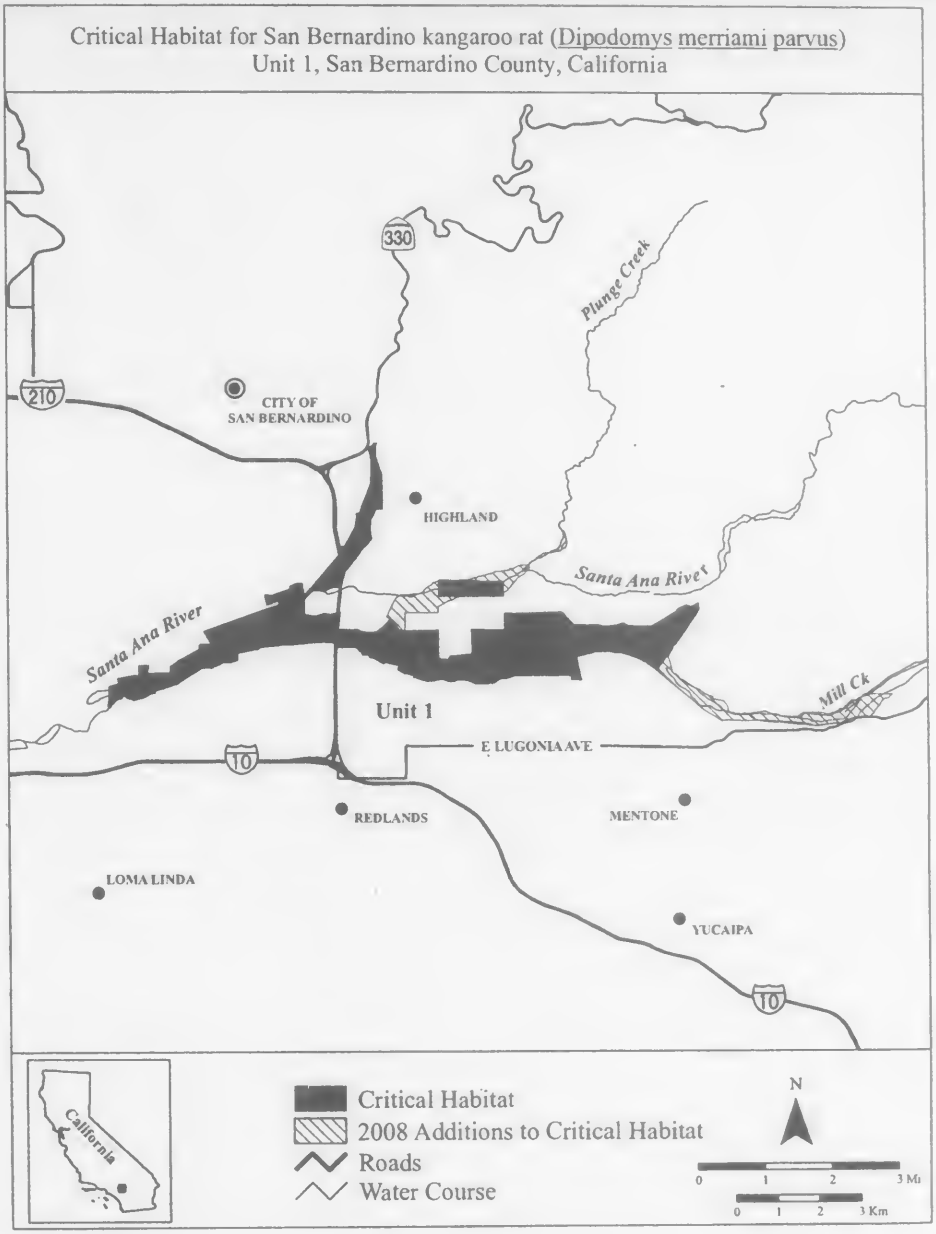
(ii) Note. Map of Unit 1—Santa Ana River Wash follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(9) Unit 4: Cable Creek Wash, San Bernardino County, California. From USGS 1:24,000 quadrangles San Bernardino North and Devore.

(i) Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 463568, 3787386; 463824, 3787384; 463795, 3787337; 463726, 3787340; 463697, 3787333; 463683, 3787308; 463680, 3787241; 463699, 3787117; 463708, 3787053; 463689, 3787019; 463683, 3786998; 463684, 3786958; 463694, 3786922; 463684, 3786907; 463675, 3786895; 463707, 3786860; 463745, 3786832; 463788, 3786802; 463836, 3786736; 463867, 3786684; 463873, 3786642; 463874, 3786624; 463864, 3786583; 463876, 3786558; 463940, 3786501; 463991, 3786456; 463997, 3786442; 463895, 3786414; 464021, 3786300; 464108, 3786350; 464019, 3786438; 464058, 3786486; 464106, 3786549; 464152, 3786592; 464248, 3786695; 464286, 3786693; 464298, 3786637; 464381, 3786604; 464488, 3786695; 464541, 3786810; 464438, 3786856; 464541, 3786984; 464566, 3786984; 464673, 3786984; 464677, 3786939; 464644, 3786911; 464624, 3786894; 464612, 3786871; 464596, 3786854; 464591, 3786819; 464572, 3786785; 464557, 3786745; 464532, 3786692; 464468, 3786573; 464403, 3786489; 464354, 3786370; 464334, 3786249; 464329, 3786199; 464343, 3786123; 464358, 3786082; 464387, 3786052; 464473, 3785992; 464536, 3785965; 464570, 3785941; 464613, 3785902; 464671, 3785874; 464726, 3785856; 464759, 3785868; 464806, 3785847; 464841, 3785880; 464852, 3785918; 464872, 3785940; 464892,

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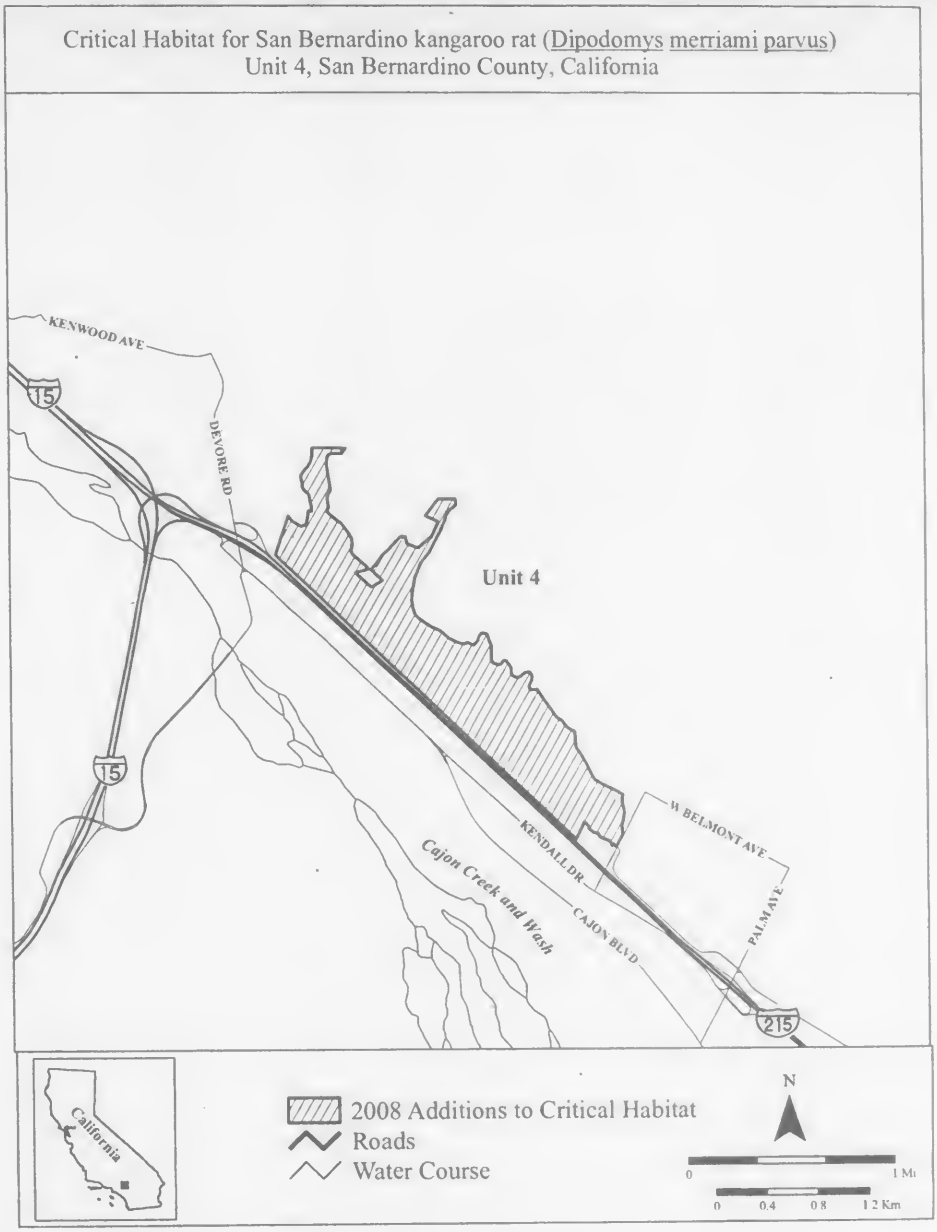
Note: Map of Unit 4—Cable Creek Wash follows:



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(10) Unit 5: Bautista Creek, Riverside County, California. From USGS 1:24,000 quadrangles San Jacinto, Lake Fulmor, and Blackburn Canyon.

(i) Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 512399, 3729457; 512445, 3729531; 512490, 3729591; 512548, 3729672; 512629, 3729768; 512689, 3729841; 512729, 3729881; 512768, 3729895; 512788, 3729884; 512978, 3729767; 513280, 3729497; 513714, 3729078; 513781, 3729056; 513858, 3728976; 513962, 3728935; 513972, 3728802; 514159, 3728535; 514175, 3728297; 514331, 3727986; 514330, 3727985; 514312, 3727966; 514301, 3727955; 514280, 3727944; 514268, 3727921; 514269, 3727892; 514256, 3727867; 514240, 3727844; 514248, 3727786; 514261, 3727723; 514269, 3727677; 514281, 3727598; 514301, 3727539; 514319, 3727505; 514349, 3727486; 514370, 3727482; 514403, 3727479; 514445, 3727482; 514482, 3727484; 514508, 3727484; 514550, 3727473; 514582, 3727459; 514602, 3727441; 514621, 3727408; 514633, 3727361; 514637, 3727327; 514647, 3727299; 514659, 3727264; 514674, 3727204; 514684, 3727122; 514693, 3727042; 514710, 3726976; 514720, 3726953; 514739, 3726937; 514767, 3726915; 514815, 3726893; 514867, 3726851; 514896, 3726818; 514914, 3726776; 514914, 3726742; 514908, 3726698; 514908, 3726671; 514918, 3726646; 514940, 3726626; 514956, 3726569; 514976, 3726509; 514999, 3726460; 515034, 3726400; 515057, 3726377; 515097, 3726352; 515145, 3726331; 515166, 3726319; 515198, 3726299; 515241,

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Note: Map of Unit 5—Bautista Creek follows:

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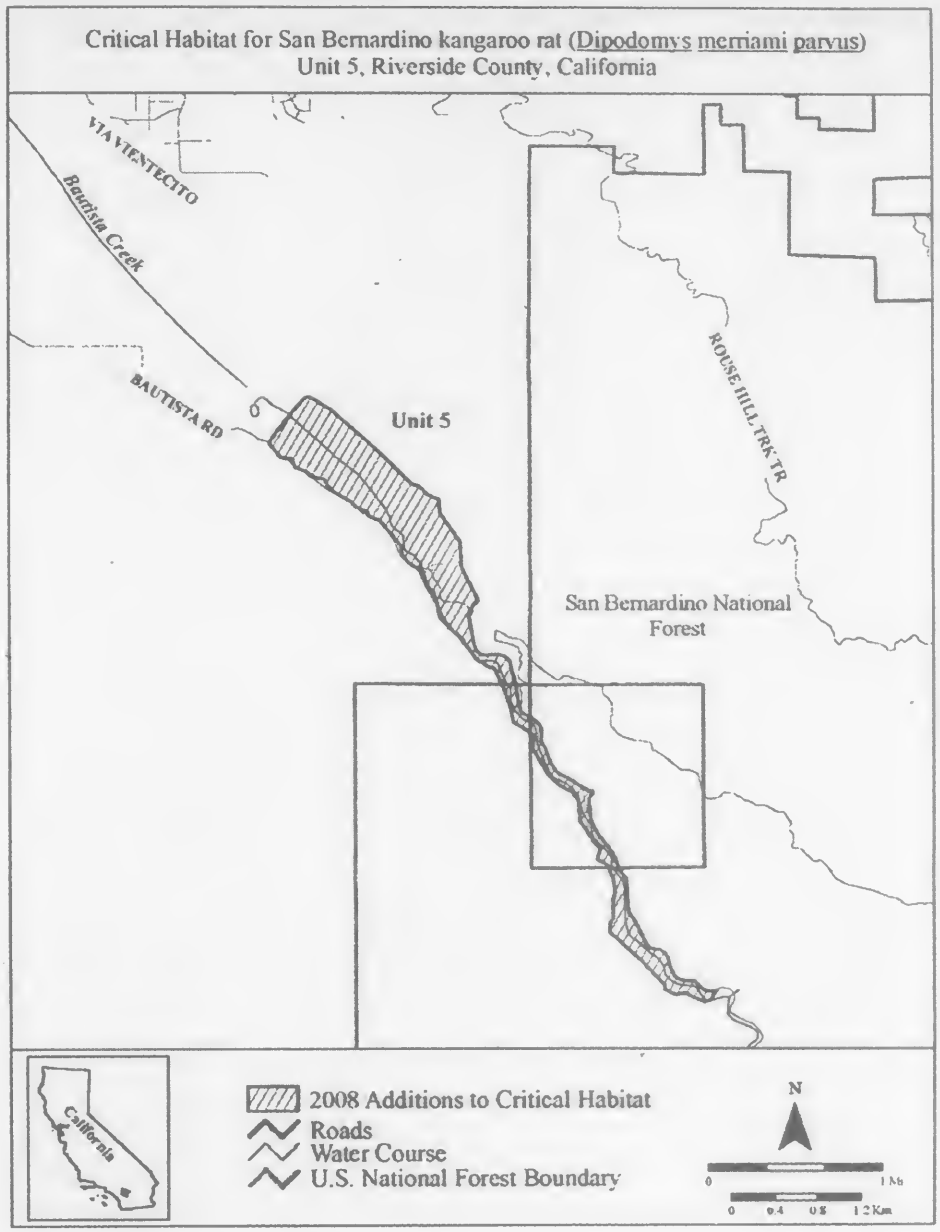

* * * * *

Dated: March 21, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–6874 Filed 4–15–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2007–0010]; [92210–1117–0000–B4]

RIN 1018–AV04

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Poa atropurpurea (San Bernardino bluegrass) and Taraxacum californicum (California taraxacum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for *Poa atropurpurea* (San Bernardino bluegrass) and *Taraxacum californicum* (California taraxacum) under the Endangered Species Act of 1973, as amended (Act). We are also notifying the public that we have received new information concerning portions of three proposed critical habitat units (see "New Information Received" section) that may result in the final designation of critical habitat differing from the proposed rule published on August 7, 2007 (72 FR 44232). We also announce the availability of the draft economic analysis (DEA) of the proposed critical habitat designation and announce an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, the new information we have received, and the amended required determinations section. Comments previously submitted on this rulemaking do not need to be resubmitted. These comments have already been incorporated into the public record and will be fully considered in preparation of the final rule.

DATES: We will accept public comments received or postmarked on or before May 16, 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–AV04; 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: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on the proposed critical habitat designation for *Poa atropurpurea* and *Taraxacum californicum* published in the **Federal Register** on August 7, 2007 (72 FR 44232), the DEA of the proposed designation, the new information regarding Units 1, 14, and 15, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by designation such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of *Poa atropurpurea* and *Taraxacum californicum* habitat (especially in Unit 1),
- What areas occupied at the time of listing and that contain features essential for the conservation of the species should be included in the designation and why, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Specifically, with reference to those U.S. Forest Service (USFS) lands that are proposed for designation, information on any areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act; particularly the appropriateness of including or excluding lands covered by the Cleveland National Forest's (CNF) Habitat Management Guide for Four Sensitive Plant Species in Riparian Montane Meadows (CNF 1991), and the San Bernardino National Forest's (SBNF) Meadows Habitat Management Guide (SBNF 2002).

(4) Any additional proposed critical habitat areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request information on any operative or draft habitat conservation plans that include *Poa atropurpurea* or *Taraxacum californicum* as covered species that have been prepared under section 10(a)(1)(B) of the Act, or any other management plan, conservation plan, or agreement that benefits either plant or its primary constituent elements.

(5) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(6) Additional scientific information that will help us to better delineate areas that contain the primary constituent elements, especially in proposed critical habitat Unit 1 (Pan Hot Springs), Unit 14 (Laguna Meadow), or Unit 15 (Bear Valley) (see "New Information Received" section below).

(7) Information on the number of individual plants observed in any unit of critical habitat for either *Poa atropurpurea* or *Taraxacum californicum*; in particular, we are seeking information on the number of individual *T. californicum* plants observed in Unit 1 since this species was listed in 1998.

(8) Information as to whether State or local environmental conservation measures referenced in the DEA were in place at the time of listing, were adopted as a result of the listing of *Poa atropurpurea* or *Taraxacum californicum* under the Act, or were enacted for other reasons.

(9) Information regarding potential impacts on Tribal resources from the designation of critical habitat within the proposed designations, especially in proposed critical habitat Unit 1 (Pan Hot Springs), in light of a comment we received that describes a sacred Tribal site of the San Miguel Band of Mission Indians.

(10) Information on whether the DEA identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs or benefits we have inadvertently overlooked.

(11) Information on any economic costs and benefits associated with the

potential addition of Unit 1 (Pan Hot Springs Meadow) to the critical habitat designation for *Taraxacum californicum* announced in this document.

(12) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes likely imposed as a result of the designation of critical habitat.

(13) Information on whether the DEA correctly assesses the effect (or lack thereof) on regional costs associated with any land use controls that may result from the designation of critical habitat.

(14) Information on areas that could be disproportionately impacted by the designation of critical habitat for *Poa atropurpurea* or *Taraxacum californicum*.

(15) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation, and in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(16) Information on whether the DEA appropriately identifies all costs that could result from the critical habitat designation.

(17) Information on any quantifiable economic benefits of the designation of critical habitat.

(18) Whether the benefits of excluding any particular area from the critical habitat designation under section 4(b)(2) of the Act outweigh the benefits of including that area in the designation.

(19) Economic data on the incremental costs of designating any particular area as critical habitat.

(20) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Comments and information submitted on the proposed rule (72 FR 44232) during the initial comment period from August 7, 2007, to October 9, 2007, or the second comment period (72 FR 70284) from December 11, 2007, to January 25, 2008, do not need to be resubmitted as they have already been incorporated into the public record. Our final determination concerning the designation of critical habitat will take into consideration all written comments and any additional information we receive during all comment periods, as well as verbal comments received during the January 10, 2008, public hearing. On the basis of information provided during the public comment periods on the critical habitat proposal and the DEA, we may, during the development of our final determination, find that areas proposed are not essential, or are appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section. We will not consider 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 hard copy 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 hard copy comments on *http://www.regulations.gov*.

Comments and materials we receive (and have received), as well as supporting documentation we used in preparing this notice, will be available for public inspection on *http://www.regulations.gov* [FDMS Docket Number FWS–R8–ES–2007–0010], or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**), by visiting the Federal eRulemaking Portal at *http://www.regulations.gov*, or on our Web site at *http://www.fws.gov/carlsbad*.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this notice. For more information on the taxonomy and biology of *Poa atropurpurea* and *Taraxacum californicum*, refer to the final listing rule published in the **Federal Register** on September 14, 1998 (63 FR 49006) and the proposed critical habitat rule published on August 7, 2007 (73 FR 44232).

On September 13, 2004, the Center for Biological Diversity (CBD) and California Native Plant Society (CNPS) challenged our failure to designate critical habitat for *Poa atropurpurea and Taraxacum californicum (CBD and CNPS* v. *Norton*, 04–1150 RT SGLx; C.D. Cal.). In settlement of the lawsuit, the Service agreed to submit to the **Federal Register** a proposed rule to designate critical habitat, if prudent, on or before July 27, 2007, and a final designation by July 25, 2008. On August 7, 2007, we published a proposed rule to designate critical habitat, identifying approximately 3,014 acres (ac) (1,221 hectares (ha)) of land in San Bernardino and San Diego Counties, California, as critical habitat for *P. atropurpurea*, and approximately 1,930 ac (782 ha) of land in San Bernardino County, California, as critical habitat for *T. californicum* (72 FR 44232). During the first open comment period, we received a request for a public hearing. To respond to this request, we reopened the comment period from December 11, 2007, to January 25, 2008 (72 FR 70284), and conducted the public hearing in San Bernardino, California on January 10, 2008.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, in accordance with section 7(a)(2) of the Act.

New Information Received

During the first two comment periods, we received new information indicating that some portions of the proposed critical habitat in Unit 1 (Pan Hot Springs), Unit 14 (Laguna Meadow), and Unit 15 (Bear Valley) may not contain the physical and biological features essential to the conservation of *Poa atropurpurea*. By this document, we are notifying the public that the final designation of critical habitat may differ from the proposed rule published on August 7, 2007 (72 FR 44232). We intend to use the best available science to delineate the specific geographic areas that contain the primary constituent elements for *P. atropurpurea* laid out in the appropriate quantity and spatial arrangement for the conservation

of the species. Therefore, we are requesting any additional information that may be useful in reassessing the proposed boundaries of Unit 1, Unit 14, or Unit 15 for *P. atropurpurea*. In particular, information indicating the distribution of any primary constituent element in these units would be helpful to improving the final critical habitat designation.

Additionally, we received several other comments related to proposed Unit 1 (Pan Hot Springs Meadow). We received information indicating that lands within or adjacent to Pan Hot Springs are considered sacred by the San Miguel Band of Mission Indians, and are seeking input from the San Miguel Band of Mission Indians and the public at large to better understand if the designation of critical habitat would have any impacts on the use of this sacred site. Secondly, we received information from members of the Board of Directors for the Big Bear City Community Services District (BBCCSD) indicating that they are interested in developing a conservation strategy or habitat management plan to conserve areas within proposed Unit 1. Should such a plan be submitted prior to the close of this public comment period, we will evaluate the appropriateness of excluding this area under section 4(b)(2) of the Act. Finally, we received new information from one of our peer reviewers indicating that Unit 1, which was only proposed as critical habitat for *Poa atropurpurea*, should also be considered as critical habitat for *Taraxacum californicum* because it meets our criteria for critical habitat. This information is explained in greater detail below in the "Unit 1: Pan Hot Springs Meadow" section. At this time, we are considering the possibility of including this unit as critical habitat for *T. californicum*.

Unit 1: Pan Hot Springs Meadow

We are considering the possibility of including Unit 1 as critical habitat for *Taraxacum californicum* (see Figure 1). This unit is currently only proposed as critical habitat for *Poa atropurpurea*. Unit 1 consists of an approximately 142-ac (57-ha) meadow habitat. New information that we received from a peer reviewer indicates that Pan Hot Springs Meadow was occupied by *T. californicum* at the time of listing and that this species continues to occur within this unit. In the proposed rule, we incorrectly stated that "in the last known survey conducted for *Taraxacum californicum* in 1985, fewer than 10 individuals were also reported from Unit 1." Dr. Timothy Krantz, a recognized species expert on both *P. atropurpurea* and *T. californicum*, indicated in his peer review of our proposed critical habitat designation that in Unit 1 "several dozen individuals of *T. californicum* have been observed on numerous occasions since 1985." On March 4, 2008, Dr. Krantz stated that although he did not have field notes, he believes there are approximately 15–20 individual *T. californicum* plants near the well head of Pan Hot Springs and additional *T. californicum* plants scattered in other portions of the meadow (Krantz 2008, p. 1). In both his peer review and follow-up comment, he reiterated the importance of this site to the overall distribution of the species and stated that the site has biogeographical significance because it represents one of the largest of three remaining sites of *T. californicum* at the northeast end of Big Bear Valley. At the time of the proposed rule, we believed that our proposal adequately represented the habitat needed for the conservation of *T. californicum* throughout its range. In light of the information provided by the peer reviewer, this area may meet our criteria for critical habitat. This unit appears to contain all of the features essential to the conservation of *T. californicum*, and appears to meet our criteria for critical habitat because the meadow is currently occupied by *T. californicum* and supports a population of greater than 10 individuals (Krantz 2007, p. 1; 2008, p. 1). We are seeking additional information regarding the amount and distribution of *T. californicum* in Unit 1 (Pan Hot Springs Meadow). If it is confirmed that the population of *T. californicum* is greater than 10 individuals we may designate this area as critical habitat for *T. californicum* as well as *Poa atropurpurea*. This unit is located partially within the SBNF boundary, east of Big Bear Lake, and just west of Baldwin Lake. The majority of Unit 1 is privately owned by the BBCCSD.

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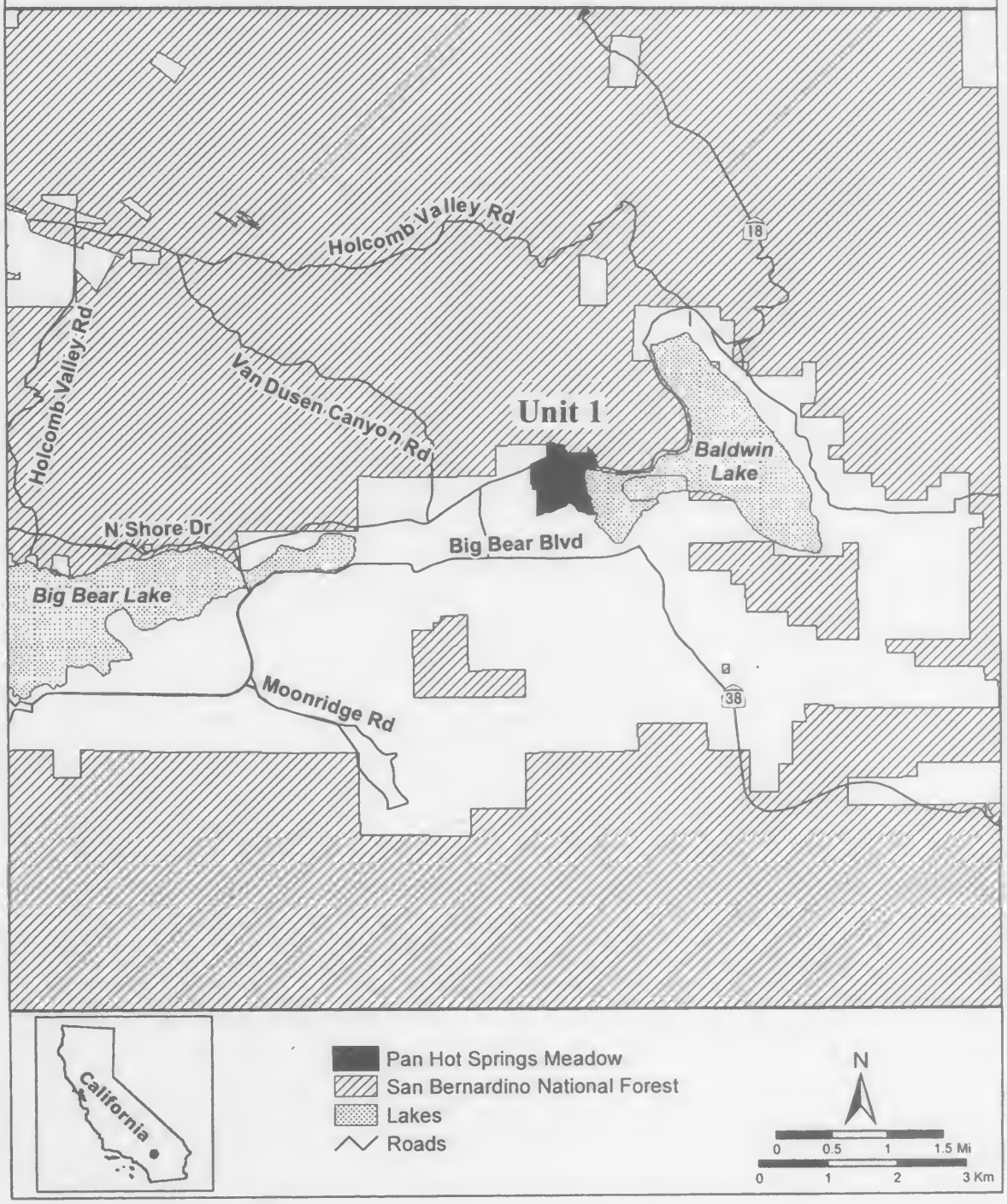
Figure 1
New area being considered as Critical Habitat for *Taraxacum californicum* (California taraxacum).
Pan Hot Springs Meadow, San Bernardino County, California



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Taraxacum californicum and features essential to its conservation are threatened in this unit by invasion of nonnative herbaceous annuals, including potential hybridization of *T. californicum* with *T. officinale* (Krantz 2007, p. 1; 2008, p. 1). Additionally, horse grazing and roadside dumping have been reported at this location (CNDDB 2006a, p. 12; 2006b, p. 21). Although 10 ac (4 ha) of the BBCCSD property are under a deed-restriction to protect known occurrences of *Thelypodium stenopetalum* and *Sidalcea pedata* (two federally listed pebble plains plants; 49 FR 34497; August 31, 1984), the drainage feeding the habitat was not included in the deed restriction. Without control of water availability, *T. californicum* and its essential features continue to be threatened (SBNF 2002a, p. 25). Therefore, special management considerations or protection may be required to restore, protect, and maintain the PCEs supported by Unit 1 due to the threats from human disturbance, water source alteration, and invasive nonnative plant species.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the August 7, 2007, proposed rule to designate critical habitat for *Poa atropurpurea* and *Taraxacum californicum* (72 FR 44232), we have prepared a draft economic analysis (DEA) of the proposed critical habitat designation.

The intent of the DEA is to quantify the economic impacts of all potential conservation efforts for *Poa atropurpurea* and *Taraxacum californicum*; some of these costs will likely be incurred regardless of whether we designate critical habitat. The DEA employs "without critical habitat" and "with critical habitat" scenarios. The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. The analysis looks retrospectively at baseline impacts incurred since the species were listed (63 FR 49006, September 14, 1998), and forecasts both baseline and incremental impacts likely to occur after the designation of critical habitat. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for *P. atropurpurea* and *T. californicum* over the next 20 years. The DEA does not specifically include estimated costs that may be associated with the potential addition of Unit 1 to critical habitat for *T. californicum* announced in this document; however, because the costs were already estimated for this unit for *P. atropurpurea* and the unit boundary is identical for *T. californicum*, we can likely use the same estimate for the potential economic impact of this unit for *T. californicum*. If we determine that Unit 1 should be critical habitat for *T. californicum*, we will make all necessary changes in the final economic analysis to address this issue.

Potential incremental impacts are separated according to activity into three impact categories: Impacts to recreation; impacts to transportation; and administrative costs related to the section 7 consultation process under the Act. The proposed rule also identified grazing; mining; invasive, nonnative species management; and land development activities that could alter the hydrological regime as potential threats to the species (72 FR 44232, August 7, 2007). However, except for some baseline impacts related to grazing activities, the DEA concluded that impacts associated with the proposed designation of critical habitat on these specific activities are not expected.

The pre-designation (1998 to 2007) impacts associated with species conservation activities for *Poa atropurpurea* and *Taraxacum californicum* in the areas proposed for designation range from $153,000 and $186,000, and were related to recreation, grazing, and section 7 consultations under the Act. The DEA forecasts incremental impacts associated with the proposed rulemaking to range from approximately $124,000 to $4.3 million ($11,000 to $403,000 annualized) over the next 20 years in present value terms applying a 7 percent discount rate. The present value of these impacts, applying a 3 percent discount rate, is $130,000 to $5.0 million ($8,000 to $336,000 annualized).

The DEA considers the potential economic effects of actions relating to the conservation of *Poa atropurpurea* and *Taraxacum californicum*, including costs associated with sections 4, 7, and 10 of the Act, as well as costs attributable to the designation of critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *P. atropurpurea* and *T. californicum* in areas containing features essential to the conservation of the species. The DEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector (see the "Required Determinations" section below).

Potential impacts related to recreation management account for about 86 percent of the upper-bound incremental impacts applying a 7 percent discount rate and over 79 percent of these impacts when a 3 percent discount rate is used. The remaining incremental impacts stem from transportation (14 and 21 percent using 7 and 3 percent discount rates, respectively) and administrative costs (less than 1 percent at both discount rates). The baseline impacts (impacts expected to occur whether critical habitat is designated or not) are primarily associated with transportation (68 and 75 percent using 7 and 3 percent discount rates, respectively), followed by grazing (18 and 16 percent using 7 and 3 percent discount rates, respectively), recreation management (13 and 8 percent using 7 and 3 percent discount rates, respectively), and administrative costs (2 percent at both discount rates). The majority of the incremental impacts associated with the proposed designation of critical habitat are expected to occur in Unit 1 (Pan Hot Springs Meadow), which is primarily owned by the BBCCSD. The BBCCSD is expected to bear over 86 percent of the total anticipated upper-bound incremental impacts at a 7 percent discount rate and about 79 percent at a 3 percent discount rate, while the California Department of Transportation (Caltrans) is forecast to bear approximately 14 percent and 21 percent of these impacts at 7 and 3

percent discount rates, respectively. The remaining incremental impacts (less than one percent of the total incremental impacts) are shared between the USFS, the Service, and the Federal Highway Administration (FHWA).

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed rule, the new information we have received, and our amended required determinations. The final designation may differ from the proposed rule based on new information we receive during the public comment periods. Our supporting record will reflect any new information used in making the final designation. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our August 7, 2007, proposed rule (72 FR 44232), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, the National Environmental Policy Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we revise our required determinations concerning E.O. 12866 (Regulatory Planning and Review) and the Regulatory Flexibility Act, E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act, and E.O. 12630 (Takings).

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Poa atropurpurea* and *Taraxacum californicum* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential development and dispersed recreation activities). In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. The designation of critical habitat will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize the proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

The DEA analyzes whether a particular group or economic sector is expected to bear an undue proportion of the impacts. Appendix B of the DEA describes potential impacts of proposed designation on small entities. Appendix B considers the extent to which the incremental impacts results presented in the previous sections reflect potential future impacts on small entities and the energy industry. The screening analysis is based on the estimated impacts associated with the proposed rulemaking as described in chapters 2 through 8 of the DEA. The analysis evaluates the potential for economic impacts related to several categories, including: (1) Recreation; (2) transportation; (3) mining; (4) grazing; (5) invasive, nonnative species management; and (6) development and hydrological regime. As summarized below and presented in more detail in section B.1.2 of the DEA, the BBCCSD is the only small entity expected to be affected by the proposed rulemaking.

Post-designation incremental impacts associated with proposed critical habitat designation-related conservation activities are not expected for mining (Chapter 4 of the DEA); grazing (Chapter 5 of the DEA); invasive, nonnative

species management (Chapter 6 of the DEA); or development and water source alteration activities (Chapter 7 of the DEA). The incremental administrative costs of post-designation section 7 consultations and technical assistance requests (Appendix A of the DEA) associated with the proposed critical habitat designation, as well as incremental impacts associated with transportation projects (Chapter 3 of the DEA), will be borne by State and Federal government agencies. These agencies are Caltrans, the USFS, and the Service. The State and Federal governments are not considered small entities by the SBA. As described in Chapter 2 of the DEA, post-designation incremental impacts of critical habitat associated with recreation are related to Phase II of the proposed community park in Unit 1 by BBCCSD. BBCCSD provides fire, water, sanitation, and refuse services to approximately 10,000 residents in unincorporated areas of Big Bear Valley and is considered a small entity by the SBA.

As described in section B.1 of the DEA, the screening analysis focuses on economic impacts resulting from potential modifications to recreation facility development activities proposed by BBCCSD within the area proposed for designation. The incremental impact consists of a percentage of costs of conducting the Environmental Review (ER) for Phase II of a proposed park under the California Environmental Quality Act (CEQA) that is attributable to the critical habitat designation and implementation of the anticipated mitigation or conservation measures stemming from the ER. The total cost of the CEQA process is expected to range from $150,000 to $300,000, of which approximately $100,000 to $200,000 is considered that incremental impact as this is the additional cost of the ER anticipated to stem from the designation of critical habitat.

The mitigation or conservation measures under CEQA to protect the habitat following the final designation of critical habitat are anticipated to vary from a minimal modification of the park design such that the occurrences of *Poa atropurpurea* (or areas close to the occurrences) are well-protected and are located in the more passive portions of the park to a possible relocation of the park to a more suitable location outside of Unit 1 (or to provide land elsewhere for the protection of the species in lieu of this habitat). The design modification of the proposed park is expected to cost approximately $20,000. In the extreme case that the 25-ac (10-ha) park must be relocated, BBCCSD could potentially need to find and purchase a 25-ac (10-ha) tract of land outside the proposed critical habitat designation. Because regional land values are high, a 25-ac (10-ha) lot with development potential is expected to cost between $3.0 and $4.0 million. In total, BBCCSD is expected to experience an annualized impact that ranges from a low of $10,000 to a high of $347,000. The annualized impacts are equivalent to 0.1 to 2.9 percent of BBCCSD's annual operating budget (approximately $12.1 million).

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. We have identified only one small entity that may be impacted by the proposed critical habitat designation. Although this action has a potential to impact the BBCCSD, we believe that the Phase II of their proposed park project can incorporate measures to ensure the long-term conservation of *Poa atropurpurea* in proposed critical habitat Unit 1 and BBCCSD may not need to relocate the project. Therefore, it is likely that the BBCCSD will not bear the majority of the estimated impacts, which are associated with the costs of relocating this project. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The DEA finds none of these criteria relevant to this analysis (Appendix B of the DEA). Thus, based on the information in the DEA, we do not expect *Poa atropurpurea* and *Taraxacum californicum* conservation activities within proposed critical habitat to lead to energy-related impacts. As such, we do not expect the proposed designation of critical habitat to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except as (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7 of the Act. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large

entitlement programs listed above on to State governments.

(b) Although this action has a potential to impact the BBCCSD, we believe that the Phase II of their proposed park project can incorporate measures to ensure the long-term conservation of *Poa atropurpurea* in Unit 1 and BBCCSD may not need to relocate the project. Therefore, it is likely that the BBCCSD will not bear the majority of the estimated impacts, which are associated with the costs of relocating this project. Consequently, we do not believe that critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for *Poa atropurpurea* and *Taraxacum californicum* in a takings implications assessment. Our takings implications assessment concludes that the proposed designation of critical habitat for *P. atropurpurea* and *T. californicum* does not pose significant takings implications.

Author

The primary author of this notice is staff of the Carlsbad Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 4, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–8089 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 73, No. 74
Wednesday, April 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0041]

General Conference Committee of the National Poultry Improvement Plan; Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that the Secretary of Agriculture is soliciting nominations for the election of regional membership for the General Conference Committee of the National Poultry Improvement Plan.

DATES: Consideration will be given to nominations received on or before June 2, 2008.

ADDRESSES: Nominations should be addressed to Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 101, Conyers, GA 30094–5104.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer at the above address or by telephone at (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP) is the Secretary's Advisory Committee on poultry health. The Committee serves as a forum for the study of problems relating to poultry health and, as necessary, makes specific recommendations to the Secretary concerning ways the U.S. Department of Agriculture may assist the industry in addressing these problems. The Committee assists the Department in planning, organizing, and conducting the Biennial Conference of the NPIP. The Committee recommends whether new proposals should be considered by the delegates to the Biennial Conference and serves as a direct liaison between the NPIP and the United States Animal Health Association.

Terms will expire for current regional members of the Committee in June 2008. We are soliciting nominations from interested organizations and individuals to replace members on the Committee for the South Atlantic Region (Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia, the District of Columbia, and Puerto Rico), the South Central Region (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas), and the West North Central Region (Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota). There must be at least two nominees for each position. To ensure the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent underrepresented groups (minorities, women, and persons with disabilities). At least one nominee from each of the three regions must have a demonstrated ability to represent an underrepresented group. The voting will be by secret ballot of official delegates from the respective region, and the results will be recorded.

Done in Washington, DC, this 10th day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–8093 Filed 4–15–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Vessel Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0361.

Type of Request: Regular submission.

Burden Hours: 1,348.

Number of Respondents: 1,750.

Average Hours per Response: Purse seine vessel marking, 1 hour and 15 minutes; all other vessel marking, 45 minutes.

Needs and Uses: The vessels in certain federally-regulated fisheries off the U.S. west coast are required to display the vessel's official number in three locations (port and starboard sides of the deckhouse or hull, and an appropriate weather deck). For the purse seine vessels, the vessel's official number is required on the above locations, one skiff, and one helicopter.

These requirements are necessary to aid enforcement of fishery regulations.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

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

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: April 10, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–8053 Filed 4–15–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration Mission Statement

Mission Statement; Business Development Mission to Erbil, Iraq June, 2008 *

AGENCY: Department of Commerce.

ACTION: Notice.

Mission Description: The United States Department of Commerce, International Trade Administration (ITA) is organizing a Business Development Mission to Erbil, Iraq, June 2008.* The business development mission will focus on establishing business meetings between U.S. companies and Iraqi companies, for both export and investment. The mission will be open to U.S. companies from all non-petroleum sectors. Companies with interests in the housing, financial services, agri-business/food processing, healthcare, tourism, IT, transportation, or franchising sectors will be preferred. This mission will be led by a Senior Commerce Department official. ITA will provide participating U.S. companies an opportunity to meet with key officials from the Kurdistan Regional Government (KRG), local chambers of commerce and other business groups, and various Iraqi companies. ITA also seeks to provide participating U.S. companies an opportunity to visit key commercial sites in Erbil. Security will be furnished by the U.S. Embassy Regional Reconstruction Team in Erbil, private hotel security, and the KRG.

Commercial Setting: This mission will take place in the midst of an economic and investment boom occurring in the region. The Kurdistan region is an autonomous region within Iraq with special authorities enshrined in Iraq's 2005 constitution. It has many of its own laws and its own security force, which has enabled it to largely escape the violence seen in other parts of Iraq since 2004. Indeed, not a single coalition troop member has died in Iraqi Kurdistan since 2003.

The economy of Iraqi Kurdistan has been growing from 8–25% a year over the past several years. Companies from neighboring countries, led by Turkey, currently dominate investment and trade in Iraqi Kurdistan, followed by companies from Gulf countries, Asia, and Europe. Private investment in the region was $7.6 billion in 2007. U.S. trade and investment in this region remains remarkably low in comparison, however, at less than 2% of the total. However, U.S. companies are beginning to take notice of the opportunities in Iraqi Kurdistan. A Coca-Cola bottling facility recently opened up near Erbil, while Ford and General Motors (Chevrolet) have active dealerships in the region. Furthermore, pro-American sentiment runs high in Iraqi Kurdistan, and both Iraqi Kurdish businesses and KRG officials are very supportive of U.S. business activity in the region. Recently passed legislation on investments provide exemption from income taxes for the first ten years of an investment, unhindered repatriation of project investment funds and accrued profits, 100 percent foreign ownership of land, provision of basic services (water, electricity, sewage, public road access and telecommunications) on a cost-free basis up to the boundary of a foreign investor's project site, and other attractive financial incentives.

This mission builds on previous Commerce Department engagements with the Government of Iraq, the KRG, and with Iraq's private sector. In February 2008, Secretary Gutierrez traveled to Baghdad with representatives from the U.S. private sector and former ITA Under Secretary Lavin traveled to Erbil in February 2007 with a similar delegation. Additionally, Iraqi Kurdistan has hosted numerous business delegations from Italy, Korea, Japan, Germany and other advanced economies seeking to get a foothold in one of the world's newest, most dynamic markets.

Mission Goals: The mission will facilitate business-to-business meetings between U.S. companies and their private sector counterparts in Iraq, as well as improve U.S. industries' understanding of the commercial opportunities in Iraq. The mission will also facilitate commercial policy dialogue with the KRG and Iraqi business groups. The mission aims to:

- Improve U.S. industries' understanding of the commercial opportunities in Iraq, and the Kurdistan Region of Iraq in particular.
- Facilitate business meetings between U.S. and Iraqi businesses, to expand U.S. exports to Iraq and U.S. investment in Iraq.
- Provide Iraqi Kurdish policymakers with U.S. industry feedback on the direction of commercial reforms.
- Introduce U.S. industry to the Kurdistan Region's business and government leaders.

Mission Scenario: In Iraq, the International Trade Administration will:

- Organize roundtable events, briefings, networking events, and matchmaking meetings between the delegation and key U.S. Government officials, key officials of the KRG, local companies, and industry groups.
- Arrange for selected site visits to key commercial sites. (Subject to security conditions at the time.)

PROPOSED MISSION TIMETABLE *

Day 1	• Arrive, late afternoon. • Evening trade mission briefing from U.S. Government (USG) representatives.
Day 2	• Morning reception with Kurdistan Regional Government (KRG), representatives from various Ministries. • Luncheon roundtable w/U.S. company reps already in Kurdistan. • Afternoon trip to Erbil city center—convention center, citadel, etc. • Evening dinner with banking/services sector reps.
Day 3	• Morning briefing from Erbil Chamber of Commerce, followed by networking and meeting time. • Afternoon briefing from Iraqi Businessmen's Union-Kurdistan, followed by one-on-one meeting time.
Day 4	• Morning time for one-one-one meetings, free time for trade mission delegates. • Leave, late afternoon.

Participation Requirements

All parties interested in participating in the Business Development Mission to Erbil, Iraq must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. This trade mission is designed for a minimum of 5 and a maximum of 10 qualified companies.

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $2,445 per company. Participating companies will be restricted to one representative. Additional representatives from a single company will be considered only as space permits. The fee for an additional representative will be $1,410. Expenses for travel, lodging, some meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission

application and supplemental application materials, including adequate information on the company's: products and/or services, primary market objectives, and goals for participation. If we receive an incomplete application, we may either reject the application or take the lack of information into account when we evaluate the applications.

• Each applicant must also:

—Certify that any export of the products and services that it wishes to export through the mission would be in compliance with U.S. export controls and regulations;

—Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;

—Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

—Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Selection Criteria for Participation

• Relevance of the company's business line to the mission description and goals;

• Company's primary business objectives for participating on this mission;

• Potential for business in the Iraqi market;

• Diversity of sectors represented, with preference given to companies in the housing, financial services, agri-business/food processing, healthcare, tourism, IT, transportation, or franchising sectors; [**Note:** This trade mission is open only to companies promoting non-petroleum industry sectors.]

• Capacity and intent to export goods and/or services from the United States to Iraq, or capacity and intent to invest in Iraq.

Additional factors, such as diversity of company size, type, location, demographics, and traditional under-representation in business, may also be considered during the review process.

As noted in the criteria above, this mission is not open to companies promoting goods or services in the petroleum sector.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Office of Business Liaison and the International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies. Applications for the Mission will be made available April 9, 2008 through May 8, 2008. Applications can be completed on-line on the Iraq Investment and Reconstruction Task Force Web site at *http://www.trade.gov/iraq* or can be obtained by contacting the U.S. Department of Commerce Iraq Investment and Reconstruction Task Force at 202–482–5228, *IraqInfo@mail.doc.gov*, or via the contact information below.

The application deadline is May 8, 2008. Completed applications should be submitted to the Iraq Investment and Reconstruction Task Force. Applications received after May 8, 2008 will be considered only if space and scheduling constraints permit.

Disclaimer, Security, and Transportation

Trade mission members participate in the trade mission and undertake related travel at their own risk and are advised to obtain insurance accordingly. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. Companies should consult the State Department's travel warning for Iraq: *http://travel.state.gov/travel/cis_pa_tw/tw/tw_921.html*.

ITA will coordinate with the U.S. Embassy Regional Reconstruction Team in Erbil to arrange for transportation of the mission participants to and from the airport and hotel. Transportation for certain optional activities, including visits to commercial sites in Erbil, may be provided by the KRG. The hotel that will be the primary venue for the mission is a luxury hotel and does have strong security measures in place. Security will be furnished by the U.S. Embassy Regional Reconstruction Team in Erbil, private hotel security, and the KRG.

The U.S. Government does not make any representations or guarantees as to the commercial success of businesses which participate in this trade mission.

FOR FURTHER INFORMATION CONTACT: Adam Choppin, U.S. Department of Commerce, Iraq Investment and Reconstruction Task Force, E-mail: *adam.choppin@mail.doc.gov*, Telephone: 202–482–5228, Facsimile: 202–482–0980.

*Specific dates redacted. Please contact Adam Choppin (*adam.choppin@mail.doc.gov* or (202) 482–5228) for further information.

Adam Choppin, U.S. Department of Commerce, Iraq Investment and Reconstruction Task Force, E-mail: *adam.choppin@mail.doc.gov*, Telephone: 202–482–5228, Facsimile: 202–482–0980.

[FR Doc. E8–8110 Filed 4–15–08; 8:45 am]
BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

Bureau of the Census

2010 Census Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the 2010 Census Advisory Committee. Committee members will address policy, research, and technical issues related to 2010 Decennial Census Programs. Working groups will be convened to assist in planning efforts for the 2010 Census and the American Community Survey (ACS). Last-minute changes to the agenda are possible, which could prevent giving advance notification of schedule changes.

DATES: May 15–16, 2008. On May 15, the meeting will begin at approximately 8:15 a.m. and end at approximately 5 p.m. On Friday, May 16, 2008, the meeting will begin at approximately 8:30 a.m. and end at approximately 12 noon.

ADDRESS: The meeting will be held at the U.S. Census Bureau Auditorium and Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H153, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The 2010 Census Advisory Committee is composed of a Chair, Vice-Chair, and 20 member organizations—all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census, including the ACS and related programs, and users need for information provided by the decennial census from the perspective of outside data users and other organizations having a substantial interest and expertise in the conduct and outcome of the decennial census. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–2605 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: April 11, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

[FR Doc. E8–8160 Filed 4–15–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket T–1–2008)

Foreign–Trade Zone 79 Tampa, FL, Application for Temporary/Interim Manufacturing Authority, Tampa Bay Shipbuilding and Repair Company (Shipbuilding), Tampa, FL

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by the City of Tampa, grantee of FTZ 79, requesting temporary/interim manufacturing (T/IM) authority within FTZ 79 at the Tampa Bay Shipbuilding and Repair Company (TBSRC) facility in Tampa, Florida. The application was filed on April 8, 2008.

The TBSRC facility (852 employees) is located at 1130 McCloskey Boulevard within the Hooker's Point Terminal Complex (Site 5), in Tampa. Under T/IM procedures, TBSRC would construct and repair cruise ships and ferries (HTSUS 8901.90), double–hulled liquid barges and articulating tug barges (HTSUS 8901.20), fishing boats (8902.00), tug boats (8904.00), dredgers (8905.10), offshore production platforms (8905.20), and floating docks (8905.90) for domestic and international customers. Foreign components that would be used in the construction and repair activity (up to 5% of total purchases) include: anchor chain (7315.81), aluminum beams (7610.90), flexible tubing (8307.10), diesel engines (8408.10) and parts (8409.91, 8409.99), pumps (8413.11), turbochargers (8414.59), heat exchange/cooling units (8419.50), centrifuges (8421.19), filters (8421.23, 8421.29, 8421.31), fire suppression equipment (8424.20, 9032.89), rudders (8479.89), bow thrusters (8501.53), valves (8481.10, 8481.20, 8481.30, 8481.40, 8481.80), stern tubes (8483.30, reduction gears (8483.40), transmission shaft grounding systems and seals (8483.90), generators (8501.63) and parts (8503.00), transformers (8504.34), speed drive controllers (8504.40), overfill alarms (8531.90), ACCU automated/steering systems (8537.10), generator sets (8502.39), liquid flow measurement instruments (9026.10) (duty rates: free - 5.7%).

FTZ procedures could exempt TBSRC from customs duty payments on the foreign components used in export activity. On domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign–origin components noted above. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign–origin steel mill products, which requires that full customs duties be paid on such items.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, 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. The closing period for receipt of comments is May 16, 2008.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above.

Dated: April 8, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–8175 Filed 4–15–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 08–00001.

SUMMARY: On April 10, 2008, the U.S. Department of Commerce issued an Export Trade Certificate of Review to Artalex Global ("ARGLO"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2006).

Export Trading Company Affairs ("ETCA") is issuing this notice pursuant to 15 CFR section 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR section 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as they relate to the export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, ARGLO, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping of Products to Export Markets.

2. ARGLO may exchange information on a one-to-one basis with individual Suppliers regarding that Supplier's inventories and near-term production schedules for the purpose of determining the availability of Products for export and coordinating export with distributors.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operations, ARGLO will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. ARGLO will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standard of Section 303(a) of the Act.

Definition

"Supplier" means a person who produces, provides, or sells Products, Services and/or Technology Rights.

Protection Provided by Certificate

This Certificate protects ARGLO and its directors, officers, and employees acting on its behalf, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits ARGLO from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to ARGLO by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion of the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of ARGLO or (b) the legality of such business plans of ARGLO under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in Export Trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 10, 2008.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E8–8084 Filed 4–15–08; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0097]

Federal Acquisition Regulation; Information Collection; Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0097).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning information reporting to the Internal Revenue Service (IRS) (taxpayer identification number). The clearance currently expires on June 30, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it 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.

DATES: Submit comments on or before June 16, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ernest Woodson, Contract Policy Division on (202) 501–3775.

A. Purpose

Subpart 4.9, Information Reporting to the Internal Revenue Service (IRS), and the provision at 52.204–3, Taxpayer Identification, implement statutory and regulatory requirements pertaining to taxpayer identification and reporting.

B. Annual Reporting Burden

Respondents: 250,000.
Responses per Respondent: 2.
Total Responses: 500,000.
Hours per Response: .10.
Total Burden Hours: 50,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0097, Information Reporting to the Internal Revenue Service (IRS) (Taxpayer Identification Number), in all correspondence.

Dated: April 10, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–8203 Filed 4–15–08; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0088]

Federal Acquisition Regulation; Information Collection; Travel Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0088).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning travel costs. The clearance currently expires July 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it 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.

DATES: Submit comments on or before June 16, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Contract Policy Division on (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 31.205–46, Travel Costs, requires that, except in extraordinary and temporary situations, costs incurred by a contractor for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the per diem rates in effect as of the time of travel as set forth in the Federal Travel Regulations for travel in the conterminous 48 United States, the Joint Travel Regulations, Volume 2, Appendix A, for travel is Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States, and the Department of State Standardized Regulations, section 925, "Maximum Travel Per Diem Allowances for Foreign Areas." The burden generated by this coverage is in the form of the contractor preparing a justification whenever a higher actual expense reimbursement method is used.

B. Annual Reporting Burden

Respondents: 5,800.
Responses per Respondent: 10.
Total Responses: 58,000.
Hours per Response: .25.
Total Burden Hours: 14,500.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration,

FAR Secretariat (VPR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0088, Travel Costs, in all correspondence.

Dated: April 4, 2008.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–8206 Filed 4–15–08; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Federal Acquisition Regulation; Submission for OMB Review; Contractor Use of Interagency Motor Pool Vehicles

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles. The clearance currently expires on May 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it 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.

DATES: Submit comments on or before June 16, 2008.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Beverly Cromer, Contract Policy Division, GSA (202) 501–1448.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must obtain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address. A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interagency motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Respondents: 70.

Responses Per Respondent: 2.

Annual Responses: 140.

Hours Per Response: .5.

Total Burden Hours: 70.

Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: April 10, 2008

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E8–8208 Filed 4–15–08; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patent 6,825,323, filed January 10, 2001, entitled "Compositions for treatment of hemorrhaging with activated factor VIIa in combination with fibrinogen and methods of using the same" and foreign rights (PCT/US01/000725) to ProFibrix B.V., with its principal place of business at Zernikedreef 9, 2333 CK Leiden, The Netherlands.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–ZA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–8204 Filed 4–15–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management

Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 10, 2008.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: FFEL School Survey.

Abstract: This emergency survey requests information on the institution's ability to access FFEL loans for the current academic year. In addition, the Department requests to confirm that these institutions have secured lenders for academic year 2008–09 and a list of those lenders.

Additional Information: The Department is requesting emergency clearance for an electronic survey to be sent to approximately 4,500 financial aid administrators at institutions that participate in the Federal Family Educational Loan (FFEL) Program. The FFEL school survey requests information on the institution's ability to access FFEL loans for the current academic year. In addition, the Department requests to confirm that these institutions have secured lenders for academic years 2007–08 and 2008–09, and a list of those lenders. The purpose of the survey is to ensure continued access to federal loans by monitoring any problems that institutions may be experiencing in accessing FFEL loans for both the current 2007–08 and 2008–09 academic years. The approval is requested by Thursday, April 10, 2008.

Frequency: One time.

Affected Public:

Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,500.

Burden Hours: 450.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 3658. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–8119 Filed 4–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 16, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response: "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission

of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

Dated: April 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of the Secretary

Type of Review: Revision.
Title: U.S. Department of Education Supplemental Information for the SF–424 Form.
Frequency: New Awards.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or households; Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:

Responses: 26,000.
Burden Hours: 7,860.

Abstract: In the previous clearance of the 1890–0017 collection (now 1894–0007) in 2004, the U.S. Department of Education (ED) cleared the Application for Federal Education Assistance or ED 424 under this collection number. Since that time, ED has discontinued use of the ED 424 Form and has begun using the SF–424, Application for Federal Assistance, together with the U.S. Department of Education Supplemental Information for the SF–424 form. ED made a policy decision to switch to the SF–424 in keeping with Federal-wide forms standardization and streamlining efforts, especially with widespread agency use of Grants.gov. There were several data elements/questions on the ED 424 that were required for ED applicants that were not included on the SF–424. Therefore, ED put these questions that were already cleared as part of the 1890–0017 collection (now 1894–0007) on a form entitled the U.S. Department of Education Supplemental Information for the SF–424.

The forms in the SF–424 forms family (e.g., the SF–424 Core Form, SF–424M, etc.) have already been cleared for use by Federal agencies to collect certain identifying information and other data from grant applicants. In this renewal for the collection package for 1894–0007 (formerly 1890–0017), ED is requesting clearance only for the U.S. Department of Education Supplemental Information for the SF–424 form (ED Supplemental Information form). The questions on this form deal with the following areas: Project Director identifying and contact information; Novice Applicants; and Human Subjects Research. The ED supplemental information form could be used with any of the SF–424 forms in the SF–424 forms family, as applicable.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 3589. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–8121 Filed 4–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; Comment Request

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On April 10, 2008, the Department of Education published a comment period notice in the **Federal Register** (Page 19492, Column 1) for the information collection, "Generic Application Package for Discretionary Grant Programs." The Type of Review is hereby corrected to Extension.

The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: April 10, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E8–8117 Filed 4–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice Inviting Applications From Test Publishers for a Determination of the Suitability of a Test for Use in the National Reporting System for Adult Education

AGENCY: Office of Vocational and Adult Education, U.S. Department of Education.

ACTION: Notice inviting applications from test publishers for a determination of the suitability of a test for use in the National Reporting System for Adult Education.

SUMMARY: The Department of Education (Department) announces the date by which test publishers must submit tests to the Secretary for review and approval for use in the National Reporting System for Adult Education (NRS).

FOR FURTHER INFORMATION CONTACT: Mike Dean, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11152, Potomac Center Plaza, Washington, DC 20202–7240. Telephone: (202) 245–7828 or via Internet: *Mike.Dean@ed.gov*.

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

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to any of the contact people listed in this section.

SUPPLEMENTARY INFORMATION: On January 14, 2008, the Secretary published final regulations for 34 CFR part 462 in the **Federal Register** (73 FR 2306). The regulations established procedures for determining the suitability of tests for use in the NRS.

Submission Requirements

a. A test publisher must comply with the requirements in 34 CFR 462.11 when submitting an application. A test publisher is not required to submit any form or information except as required in § 462.11.

b. In accordance with § 462.10, the deadline for transmittal of applications is April 14, 2008.

c. Whether you submit your application by mail (through the U.S. Postal Service or a commercial carrier) or you hand deliver (or use a courier service) your application, you must mail or deliver three copies of your application, on or before the deadline date, to the following address: NRS Assessment Review, c/o American Institutes for Research, 1000 Thomas

Jefferson Street, NW., Washington, DC 20007.

d. If you submit your application by mail or commercial carrier, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

e. If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

f. If you submit your application by hand delivery, you (or a courier service) must deliver three copies of the application by hand, on or before 4:30 p.m., Washington, DC time on the application deadline date.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 10, 2008.

Pat Stanley,

Deputy Assistant Secretary for Vocational and Adult Education.

[FR Doc. E8–8199 Filed 4–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (NACIQI) Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Office of Postsecondary Education, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the NACIQI and invite third-party oral presentations (3–5 minutes) before the NACIQI. In all instances, your comments about agencies seeking initial recognition, continued recognition, and/or an expansion of an agency's scope of recognition must relate to the Criteria for Recognition found at 20 U.S.C. 1099b and 34 CFR Part 602. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter, dated April 30, 2007, that requested the interim report. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

When and Where Will the Meeting Take Place?

We will hold the public meeting on Monday, June 9, 2008, from 9 a.m. until approximately 5:30 p.m., and on Tuesday, June 10, 2008, from 9 a.m. until approximately 5:30 p.m. in the Metropolitan Center at The Liaison Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001. You may call the hotel at (202) 638–1616 to inquire about rooms.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Melissa Lewis, NACIQI Executive Director, if you have questions about the meeting. You may contact her at the U.S. Department of Education, Room 7127, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Melissa.Lewis@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the NACIQI?

The NACIQI is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011c.

What Are the Functions of the NACIQI?

The NACIQI advises the Secretary of Education about:

- The establishment and enforcement of the Criteria for Recognition of accrediting agencies or associations under Subpart 2 of Part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Items Will Be on the Agenda for Discussion at the Meeting?

Agenda topics will include the review of agencies that have submitted petitions for renewal of recognition and/or an expansion of an agency's scope of recognition, and the review of agencies that have submitted an interim report.

What Agencies Will the NACIQI Review at the Meeting?

The following agencies will be reviewed during the June 9–10, 2008 meeting of the NACIQI:

Nationally Recognized Accrediting Agencies

Petitions for an Expansion of the Scope of Recognition

1. National League for Nursing Accrediting Commission. (Current scope of recognition: The accreditation in the United States of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs.) (Requested scope of recognition: The accreditation in the United States of programs in practical nursing, and diploma, associate, baccalaureate and higher degree nurse education programs, including those offered via distance education.)

Petitions for Renewal of Recognition

1. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar. (Current and requested scope of recognition: The accreditation throughout the United States of programs in legal education that lead to the first professional degree in law, as well as freestanding law schools offering such programs. This recognition also extends to the Accreditation Committee of the Section of Legal Education (Accreditation Committee) for decisions involving continued accreditation (referred to by the agency as "approval") of law schools.)

2. American Board of Funeral Service Education, Committee on Accreditation. (Current and requested scope of recognition: The accreditation of institutions and programs within the United States awarding diplomas, associate degrees, and bachelor's degrees in funeral service or mortuary science, including accreditation of distance learning courses and programs offered by these programs and institutions.)

3. American Speech-Language-Hearing Association, Council on Academic Accreditation in Audiology and Speech-Language Pathology. (Current and requested scope of recognition: The accreditation and preaccreditation (Accreditation Candidate) throughout the United States of education programs in audiology and speech-language pathology leading to the first professional or clinical degree at the master's or doctoral level, and the accreditation of these programs offered via distance education.)

4. Council on Naturopathic Medical Education. (Current and requested scope of recognition: The accreditation and pre-accreditation throughout the United States of graduate-level, four-year naturopathic medical education programs leading to the Doctor of Naturopathic Medicine (N.M.D.) or Doctor of Naturopathy (N.D.).)

5. Montessori Accreditation Council for Teacher Education, Commission on Accreditation. (Current and requested scope of recognition: The accreditation of Montessori teacher education institutions and programs throughout the United States.)

6. National Accrediting Commission of Cosmetology Arts and Sciences. (Current and requested scope of recognition: The accreditation throughout the United States of postsecondary schools and departments of cosmetology arts and sciences and massage therapy.)

Interim Reports

(An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition.)

1. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar.

2. Association for Clinical Pastoral Education, Inc., Accreditation Commission.

3. Southern Association of Colleges and Schools, Commission on Colleges.

4. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

State Agency Recognized for the Approval of Public Postsecondary Vocational Education

Interim Reports

1. Middle States Commission on Secondary Schools.

2. Pennsylvania State Board of Vocational Education.

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. North Dakota Board of Nursing.

Who Can Make Third-Party Oral Presentations at This Meeting?

We invite you to make a third-party oral presentation before the NACIQI concerning the recognition of any agency published in this notice.

How Do I Request To Make an Oral Presentation?

You must submit a written request to make an oral presentation concerning an agency listed in this notice to the contact person identified earlier in this notice so that the request is received via mail, fax, or e-mail no later than May 5, 2008.

Your request (no more than six pages maximum) must include:

1. The names, addresses, phone and fax numbers, and e-mail addresses of all persons seeking an appearance,

2. The organization they represent, and

3. A brief summary of the principal points to be made during the oral presentation.

If you wish, you may attach documents illustrating the main points of your oral testimony. Please keep in mind, however, that any attachments are included in the six-page limit.

Please do not send materials directly to NACIQI members. Only materials submitted by the deadline to the contact person listed in this notice and in accordance with these instructions become part of the official record and are considered by the NACIQI in its deliberations. Documents received after the April 28, 2008 deadline will not be distributed to the NACIQI for its consideration. Individuals making oral presentations may not distribute written materials at the meeting.

If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?

This notice requests third-party oral testimony, not written comment. A request for written comments on agencies that are being reviewed during this meeting was published in the **Federal Register** on March 3, 2008. The NACIQI will receive and consider only those written comments that are submitted by April 2, 2008, and in accordance with that **Federal Register** notice.

How Do I Request To Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?

At the conclusion of the meeting, the NACIQI, at its discretion, may invite attendees to address the NACIQI briefly on issues pertaining to the functions of the NACIQI, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. Lewis before or during the meeting.

How May I Obtain Access to the Records of the Meeting?

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St., NW., Washington, DC 20006, between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: April 9, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–8188 Filed 4–15–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Environmental Management; Environmental Management Site-Specific Advisory Board; Notice of Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Site-Specific Advisory Board has been renewed for a two-year period beginning April 11, 2008. The Environmental Management Site-Specific Advisory Board provides advice and recommendations to the Assistant Secretary for Environmental Management.

The Board provides the Assistant Secretary for Environmental Management (EM) with information, advice, and recommendations concerning issues affecting the EM program at various sites. These site-specific issues include: Clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities.

Furthermore, the renewal of the Environmental Management Site-Specific Advisory Board has been determined to be essential to conduct Department of Energy business and to be in the public interest in connection with the performance of duties imposed on the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

Further information regarding this Advisory Board may be obtained from Mr. Doug Frost, Designated Federal Officer, at (202) 586–5619.

Issued in Washington, DC on April 11, 2008.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E8–8181 Filed 4–15–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–151–005]

Columbia Gas Transmission Corporation; Notice of Application

April 10, 2008.

Take notice that on April 1, 2008, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed, pursuant to section 7(c) of the Natural Gas Act, an application to amend its certificate issued in Docket No. CP98–151. Columbia proposes to amend its lease of capacity to Millennium Pipeline Company, L.L.C. (Millennium) and Millennium's lease of capacity to Columbia. 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 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.

Any questions regarding this Application should be directed to Fredric J. George, Lead Counsel, Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273 at (304) 357–2359 or by fax at (304) 357–3206.

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 below listed comment date, 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments 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.

Comment Date: May 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8146 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–150–010]

Millennium Pipeline Company, L.L.C.; Notice of Application

April 10, 2008.

Take notice that on March 31, 2008, Millennium Pipeline Company, L.L.C. (Millennium) One Blue Hill Plaza, Seventh Floor, P.O. Box 1565, Pearl River, New York 10965 filed, pursuant to section 7(c) of the Natural Gas Act, an application to amend its certificate issued in Docket No. CP98–150. Millennium proposes to amend its certificate to: (1) Authorize the lease and leaseback agreements it has entered into with the Industrial Development Agencies of the Counties of Orange, Sullivan, Broome, Chemung, and Delaware, New York, in order to obtain partial abatement of state property taxes and other tax relief; (2) extend the term of the regulatory asset Millennium has been authorized to record from ten to fifteen years to coincide with its executed firm transportation agreements; and (3) authorize certain amendments to the lease agreements between Millennium and Columbia Gas Transmission Corporation. 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 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.

Any questions regarding this Application should be directed to Daniel F. Collins or Glenn S. Benson, Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, Washington, DC 20004, at (202) 662–4586 (Daniel) or (202) 662–4589 (Glenn) or by fax at (202) 662–4643.

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 below listed comment date, 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments 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.

Comment Date: May 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8145 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11879–001✖Idaho]

Symbiotics, LLC; Notice of Availability of Final Environmental Assessment

April 10, 2008.

In accordance with the National Environmental Policy Act of 1969, as amended, and Federal Energy Regulatory Commission (Commission or FERC) regulations (18 CFR Part 380), Commission staff have reviewed the license application for the Chester Diversion Hydroelectric Project (FERC No. 11879) and have prepared a final environmental assessment (EA) on the proposed action. The project is located on the Henry's Fork of the Snake River in Fremont County, Idaho, downstream of some of the most well-known fly fishing areas in the country.

Symbiotics, LLC (applicant) filed an application for license with the Commission for an original license for the 3.3-megawatt (MW) Chester Diversion Hydroelectric Project, using the existing Cross Cut Diversion dam (Chester Diversion dam).[1] In this final EA, Commission staff analyzes the probable environmental effects of construction and operation of the project and have concluded that approval of the license, with appropriate staff-recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the final EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The final EA also may be viewed on the Commission's Internet Web site (*http://www.ferc.gov*) using the "eLibrary" link. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–6088, or on the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676, or for TTY contact (202) 502–8659.

[1] The Chester Diversion dam was initially constructed as the "Cross Cut Diversion dam" because it served as the diversion dam for the Cross Cut irrigation canal. It now also serves as the diversion dam for the Last Chance irrigation canal, and because of its location near Chester, Idaho, is now referred to as the Chester Diversion dam. While both names are appropriate, we use the "Chester Diversion" moniker for consistency and clarity in this EA.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8143 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–54–000]

City of Vernon, CA; Notice of Filing

April 10, 2008.

Take notice that on April 4, 2008, City of Vernon, California (Vernon) filed a petition of declaratory order, pursuant to section 385.207 of the Commission's regulations, request for waiver of filing fee.

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 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8148 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA08–66–000]

Duke Energy Carolinas, LLC; Notice of Filing

April 10, 2008.

Take notice that on March 14, 2008, Duke Energy Carolinas, LLC in compliance with Commission's Order No. 890–A tendered for filing its open access tariff, FERC Electric Tariff Volume No. 4 (Sixth Revised OATT).

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 April 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8150 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–1372–006]

Midwest Independent Transmission System Operator, Inc.; Notice of Filing

April 10, 2008.

Take notice that on March 21, 2008, the Midwest Independent Transmission System Operator, Inc.(Midwest ISO), subject to modification, a proposed Ancillary Services Markets (AMS) proposal with a launch date of June 1, 2008. Midwest ISO has determined that the AMS launch date must be moved to September 9, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. 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 April 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8149 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–53–000]

PowerSouth Energy Cooperative, on Behalf of Itself and Its Members: Baldwin EMC; Central Alabama EC; CHELCO; Clarke-Washington EMC; Coosa Valley EC; Covington EC; Dixie EC; Escambia River EC; Gulf Coast EC; Pea River EC; Pioneer EC; South Alabama EC; Southern Pine EC; Tallapoosa River EC; West Florida EC; Wiregrass EC; The Utilities Board of the City of Andalusia, Alabama; The City of Brundidge, Alabama; Water Works & Electric Board of the City of Elba; The Utilities Board of the City of OPP, Alabama; Notice of Filing

April 10, 2008.

Take notice that on April 4, 2008, PowerSouth Energy Cooperative (PowerSouth), on behalf of itself and its member owners Baldwin EMC, Central Alabama EC, CHELCO, Clarke-Washington EMC, Coosa Valley EC, Covington EC, Dixie EC, Escambia River EC, Gulf Coast EC, Pea River EC, Pioneer EC, South Alabama EC, Southern Pine EC, Tallapoosa River EC, West Florida EC, Wiregrass EC, The Utilities Board of the City of Andalusia, Alabama, The City of Brundidge, Alabama, Water Works & Electric Board of the City of Elba, and The Utilities Board of the City of OPP, Alabama (Members), filed a request for partial waiver of certain regulatory obligations relating to section 210 of the Public Utilities Regulatory Policies Act of 1978 imposed on PowerSouth and its Members under sections 292.303(a) and 292.303(b), 18 CFR 292.303(a) and 202.303(b), of the Commission's regulations.

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 email 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 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8147 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

April 10, 2008.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 17, 2008, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note —Items listed on the agenda may be deleted without further notice.

FOR FURTHER INFORMATION CONTACT: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items, struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does

not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

932TH—MEETING

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	ELECTRIC	
E–1	RM04–7–001	Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities.
E–2	RM08–7–000	Modification of Interchange and Transmission Loading Relief Reliability Standards; and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards.
E–3	EL08–24–000	Pacific Gas and Electric Company.
E–4	EL08–23–000	PPL Electric Utilities Corporation Public Service Electric and Gas Company.
E–5	OMITTED.	
E–6	ER08–404–000	Midwest Independent Transmission System Operator, Inc.
E–7	EL05–19–002	Golden Spread Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc. and Roosevelt County Electric Cooperative, Inc. v. Southwestern Public Service Company.
	ER05–168–001	Southwestern Public Service Company.
E–8	EL05–19–003	Golden Spread Electric Cooperative, Inc., Lyntegar Electric Cooperative, Inc., Farmers' Electric Cooperative, Inc., Lea County Electric Cooperative, Inc., Central Valley Electric Cooperative, Inc. and Roosevelt County Electric Cooperative, Inc. v. Southwestern Public Service Company.
	ER05–168–002, ER06–274–008	Southwestern Public Service Company.
E–9	RM05–5–005	Standards for Business Practices and Communication Protocols for Public Utilities.
E–10	RR07–16–002	North American Electric Reliability Corporation.
E–11	ER08–389–000, ER08–389–001	San Diego Gas & Electric Company.
E–12	EC08–40–000	Puget Energy, Inc., Puget Holdings LLC, Macquarie Infrastructure Partners, Macquarie Capital Group Limited, Canada Pension Plan Investment Board, British Columbia Investment Management Corporation Alberta Investment Management and Their Public Utility Affiliates.
E–13	ER08–340–000	Southwest Power Pool, Inc.
E–14	ER96–1551–019	Public Service Company of New Mexico.
	ER01–615–015, ER07–965–001	EnergyCo Marketing and Trading, LLC.
E–15	ER06–1474–002, ER06–1474–004	PJM Interconnection, L.L.C.
E–16	EL08–37–000	Integrys Energy Group, Inc.
E–17	OMITTED.	
E–18	ER07–1096–002	Niagara Mohawk Power Corporation.
E–19	ER07–539–003, ER07–539–004, ER07–540–003, ER07–540–004.	Niagara Mohawk Power Corporation.
E–20	OMITTED.	
E–21	OMITTED.	
E–22	ER05–715–003	ISO New England, Inc.
E–23	ER05–1410–000, EL05–148–000	PJM Interconnection, L.L.C.
E–24	AD08–7–000	Annual Charges Assessments for Public Utilities.
E–25	OA07–34–000	Sierra Pacific Resources Operating Companies.
E–26	ER05–1056–002	Chehalis Power Generating, L.P.
E–27	OA07–39–000	Xcel Energy Operating Companies.
E–28	ER07–1141–001, ER07–1144–002	International Transmission Company, Michigan Electric Transmission Company, LLC, American Transmission Company, LLC Midwest Independent Transmission System Operator, Inc.
	MISCELLANEOUS	
M–1	PL08–3–000	Enforcement of Statutes, Regulations and Orders.
M–2	PL08–2–000	Obtaining Guidance on Regulatory Requirements.
M–3	RM08–8–000	Ex Parte Contacts and Separation of Functions.
M–4	AD08–6–000	Review of Notices of Penalty for Violations of Reliability Standards.
	RM05–30–002	Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards.
M–5	RM01–5–000	Electronic Tariff Filings.
	GAS	
G–1	PL07–2–000	Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity.

932TH—MEETING—Continued

Item No.	Docket No.	Company
G–2	PR05–17–000, PR05–17–002, PR05–17–004.	Duke Energy Guadalupe Pipeline, Inc.
G–3	RP03–221–011	High Island Offshore System, L.L.C.
G–4	RP04–274–006, RP04–274–007	Kern River Gas Transmission Company.
G–5	RP01–245–023, RP06–569–002, RP07–338–001.	Transcontinental Gas Pipe Line Corporation.
	HYDRO	
H–1	P–2114–116	Public Utility District No. 2 of Grant County, Washington.
H–2	P–12020–016	Marseilles Hydro Power, LLC.
H–3	P–2602–016	Duke Energy Carolinas, LLC.
	CERTIFICATES	
C–1	CP01–69–009	Petal Gas Storage Company, L.L.C.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E8–8140 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–111–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization

April 10, 2008.

Take notice that on April 4, 2008, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP08–111–000, 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 the Golden Pass Pipeline Interconnect Project, located in Calcasieu 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, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Texas Eastern proposes to construct and operate a new receipt point to receive natural gas from Golden Pass Pipeline, LLC (Golden Pass), consisting of a 16-inch hot tap valve and associated piping on Texas Eastern's Line No. 14, electronic gas measurement equipment, and overpressure protection instrumentation. Texas Eastern also proposes to utilize an existing 14-inch hot tap on Line No. 14. Texas Eastern estimates the cost of construction to be $153,078.50. Texas Eastern states that Golden Pass will reimburse Texas Eastern for all costs associated with constructing the facilities. Texas Eastern asserts that the new receipt point will provide Texas Eastern with the ability to receive up to 600 million cubic feet per day of natural gas from Golden Pass into Texas Eastern's pipeline system. Texas Eastern avers that the addition of this receipt point will have no significant impact on Texas Eastern's peak day or annual deliveries.

Any questions regarding the application should be directed to Stephen T. Veatch, Regulatory Affairs, Trunkline Gas Company, LLC, 5444 Westheimer Road, Houston, Texas 77056, call (713) 989–2024, or fax (713) 989–1158, or by e-mail *stephen.veatch@SUG.com.*

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. E8–8144 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD08–8–000]

Demand Response in Organized Electric Markets; Notice of Technical Conference

April 10, 2008.

Take notice that on May 21, 2008, Commission staff will convene a technical conference to consider issues related to demand response in organized electric markets, as discussed in the Notice of Proposed Rulemaking issued in Docket Nos. RM07–19–000 and AD07–7–000. *Wholesale Competition in Regions with Organized Electric Markets*, 122 FERC ¶ 61,167, at P 95 (2007). The technical conference will be held from 9 am to 5 pm (EDT), in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to attend. Telephone participation will not be available.

Issues that will be examined at the technical conference include: the value of demand response in organized markets; comparable compensation of demand response in organized markets; barriers to comparable treatment of demand response that have not previously been identified; solutions to eliminate such barriers; and the need for and the ability to standardize terms, practices, rules and procedures associated with demand response. A further notice with detailed information will be issued in advance of the conference.

Commission staff is now soliciting nominations for speakers at the technical conference. Persons wishing to nominate themselves as speakers should do so using the following electronic link: *https://www.ferc.gov/whats-new/registration/demand-response-05–21-speaker-form.asp*. Such nominations must be made before the close of business on April 23, 2008, so that an agenda for the technical conference can be drafted and published.

A free webcast of this event is available through *www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the Washington, DC area and via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

Transcripts of the conference will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system and on the Calendar of Events approximately one week after the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact:

Ryan Irwin, Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6454, *Ryan.Irwin@ferc.gov*.

Elizabeth Arnold, Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8818, *Elizabeth.Arnold@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8151 Filed 4–15–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0135; FRL–8357–8]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 524–EUP–00 from Monsanto Company requesting an experimental use permit (EUP) for the plant-incorporated protectants: 1) *Bacillus thuringiensis* Cry1A.105 protein and the genetic material necessary for its production (vector PV–ZMIR245) in event MON 89034 corn, 2) *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production (vector PV–ZMIR245) in event MON 89034 corn, 3) *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (Vector ZMIR39) in Event MON 88017 corn (Organization for Economic Cooperation and Development (OECD) Unique Identifier: MON–88017–3), 4) *Bacillus thuringiensis* subspecies Cry1F protein and the genetic material necessary for its production (plasmid insert PHI 8999) in corn, and 5) *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production (plasmid insert PHP 17662) in Event DAS–59122–7 corn. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments must be received on or before May 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0135, 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–2008–0135. 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: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons interested in agricultural biotechnology or those who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also 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. 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

Monsanto Company and Dow AgroSciences have used conventional breeding techniques to produce the combined trait corn product MON 89034 (Cry1A.105 and Cry2Ab2) x TC1507 (Cry1F) x MON 88017 (Cry3Bb1) x DAS–59122–7 (Cry34Ab1 and Cry35Ab1) that provides insect protection against lepidopteran insects including European corn borer, as well as the coleopteran corn rootworms. Monsanto has submitted an EUP application to test 383 acres of the combined trait product, 2,570 acres of the intermediate breeding combinations, 190 acres of MON 89034, 509 acres of other registered plant-incorporated protectants, and 1,341 acres of non-plant-incorporated protectant corn acres and border rows through June 30, 2009.

Trial protocols to be conducted include:

- Breeding and observation nursery.
- Inbred seed increase and sample hybrid production.
- Line *per se*.
- Hybrid yield and herbicide tolerance.
- Insect efficacy.
- Product characterization and performance.
- Insect resistant management.
- Seed treatment.

States involved include: Alabama, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New York, North Carolina, Ohio, Oregon, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Washington, and Wisconsin.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 7, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–8004 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2008–0269; FRL–8554–9]

Burke Street Lead Superfund Site; Junction City, Boyle County, KY; Notice of Settlements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Settlements.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into three settlements for reimbursement of past response costs concerning the Burke Street Lead Superfund Site located in Junction City, Boyle County, Kentucky.

DATES: The Agency will consider public comments on the settlements until May 16, 2008. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlements are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2008–0269 or Site name Burke Street Lead Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Batchelor.Paula@epa.gov.*
- *Fax:* 404/562–8842/Attn Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, SD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. "In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503."

Instructions: Direct your comments to Docket ID No. EPA–RO4–SFUND–2008–0269. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: April 1, 2008.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E8–8158 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2003–0250; FRL–8358–9]

Chromated Copper Arsenate Revised Risk Assessments; Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the restricted use antimicrobial pesticide chromated copper arsenate (CCA). In addition, this notice solicits public comment on risk reduction options for CCA and on EPA's preliminary benefits assessment (Phase 5 of 6–Phase Process). The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for CCA through the full, 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0402, 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 EPA–HQ–OPP–2004–0402. 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:

Lance Wormell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603-0523; fax number: (703) 308-6467; e-mail address: *wormell.lance@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. 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

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued for comment through a **Federal Register** notice published on March 17, 2004 (69 FR 12653) (FRL–7318-5); a response to comments; and related documents for CCA. EPA also is releasing for public comment a preliminary benefits assessment for CCA. EPA developed the risk assessments for CCA as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended, by the Food Quality Protection Act of 1996 (FQPA).

The registered pesticides assessed in this reregistration case are arsenic acid, arsenic pentoxide, chromic acid, and sodium dichromate. The chemical case is generically referred to as "CCA", although it also includes wood preservative uses of other inorganic arsenic-based wood preservatives such as ammoniacal copper zinc arsenate (ACZA).

CCA is a chemical wood preservative containing chromium, copper and arsenic. CCA is used in pressure treated wood to protect wood from rotting due to insects and microbial agents. EPA has classified CCA as a restricted use product, for use only by certified pesticide applicators.

CCA has been used to pressure treat lumber since the 1940s. Since the 1970s, the majority of the wood used in outdoor residential settings has been CCA-treated wood. Pressure treated wood containing CCA is no longer being produced for use in most residential settings, including decks and playsets. Virtually all residential uses of CCA were voluntarily cancelled effective December 31, 2003 and, therefore, are not included in this reregistration case. EPA's risk assessment for previously registered residential uses is also available in docket EPA–HQ–OPP–2003–0250.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for CCA. Risks of concern identified in the revised assessments include worker risks (cancer and non-cancer) resulting from dermal/inhalation exposure to arsenic and inhalation exposure to chromium.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, CCA is being reviewed through the full 6–Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for CCA. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the CCA RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pests and pesticides.

Dated: April 7, 2008.

Frank Sanders

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E8–8168 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0248; FRL–8361–5]

Creosote Revised Risk Assessments and Qualitative Economic Analysis of the Alternatives; Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the pesticide creosote. In addition, this notice solicits public comment on risk reduction options for creosote as well as solicits comments on the qualitative economic impacts analysis, (Phase 5 of 6–Phase Process). EPA is developing a Reregistration Eligibility Decision (RED) for creosote through the full, 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0248, 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–2008–0248. 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: Jacqueline Cambpell-McFarlane, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–

0001; telephone number: (703) 308–6416; fax number: (703) 308–6467; e-mail address: *campbell-mcfarlane.jacqueline@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. 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

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued for comment through a **Federal Register** notice published on December 5, 2003 (68 FR 68042) (FRL–7318–6); a response to comments; and related documents for creosote. EPA is also soliciting public comment on risk reduction options for creosote and comments on the qualitative economic impacts analysis. EPA developed the risk assessments for creosote as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Creosote, a restricted use pesticide, is a "heavy duty wood preservative" that was first registered in the United States in 1948. Presently, 13 products are registered as industrial wood preservatives for above and ground wood protection treatments, as well as wood used in marine environments. Creosote wood preservatives are used primarily in the pressure treatment of railroad ties/crossties (about 70% creosote use), utility poles/cross-arms (about 16% of all creosote use), and marine piles (> 4% creosote use. Assorted creosote-treated lumber products (e.g., timbers, poles, posts, and ground-line support structures) account for the remaining uses of this wood preservative. EPA issued cancellation orders in August 2004 that accepted the voluntary use termination request/product cancellation requests to either amend current label language to delete non-pressure treatment uses of creosote or to cancel the affected products (September 15,2007; 69 FR 55623; FRL–7682). This action canceled three pesticide registrations and terminated certain uses of seven pesticide registrations as of December 31, 2004.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for creosote. Risks of concern associated with the use of creosote are: Short-term, intermediate-term, and long-term non-cancer risks; and cancer risks for occupational handlers. Approximately one third of the dermal non-cancer scenarios indicate potential risks of concern. The non-cancer inhalation MOEs for occupational exposure to naphthalene (detected in 100% of the inhalation exposure samples when applying creosote) range from 23-1,900 with the inhalation MOEs for 16 of the 19 job functions being below the target MOE of 300. All of the cancer risks exceed the Agency's level of concern of 1×10^{-6} but only 4 of the scenarios had risks exceeding 1×10^{-4} (i.e., risks range from 1.6E-3 to 9.5E-6). In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, creosote is being reviewed through the full 6–Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for creosote. Comments received after the close of the comment period will be marked "late". EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue for comment the creosote RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering

products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests, antimicrobials, creosote.

Dated: April 11, 2008.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E8–8169 Filed 4–15–08; 8:45 .am.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0571; FRL–8360–1]

Notice of Filing of a Pesticide Petition 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 a pesticide petition 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 May 16, 2008

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0571 and the pesticide petition number (*PP 7F7186*), 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–2008–0571. 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: Raderrio Wilkins, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308–1259; e-mail address: *wilkins.raderrio@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. What Action is the Agency Taking?

EPA is printing notice of the filing of a pesticide petition 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 petition described in this notice contains 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 supports granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

New Exemption from Tolerance

PP 7F7186. Falcon Lab, LLC., 1103 Norbee Drive Wilmington, DE 19803, (petition submitted by Forster and Associates Consulting, LLC, 230 Steeplechase Circle, Wilmington, DE 19808), proposes to establish an exemption from the requirement of a tolerance for residues of the biochemical pesticide, ammonium salts of higher fatty acids [C8-C18 saturated and C8-C12 unsaturated], in or on all food commodities. Because this petition is a request for an exemption from the requirement of a tolerance without numerical limitations, no analytical method is required. EPA issued a notice in the **Federal Register** of August 8, 2007 (72 FR 44521) (FRL–8139–7) to exempt ammonium salts of higher fatty acids from the requirement of a tolerance. However, the Food Quality Protection Act (FQPA) Publicly Releasable Summary was not present in the Docket. Therefore, EPA is republishing this notice to allow for public comment period on this action.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 4, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–8073 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0046; FRL–8359–1]

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 May 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 3F4188	EPA–HQ–OPP–2008–0173
PP 7F7248	EPA–HQ–OPP–2008–0173
PP 3H5662	EPA–HQ–OPP–2008–0173
PP 7F7208	EPA–HQ–OPP–2008–0132
PP 7F7260	EPA–HQ–OPP–2008–0168
PP 7F7293	EPA–HQ–OPP–2008–0167
PP 8F7328	EPA–HQ–OPP–2008–0217

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 Tolerances

1-3. *PPs 3F4188, 7F7248, and 3H5662.* (EPA–HQ–OPP–2008–0173). Dow Agro Sciences LLC, 9330 Zionsville Road, Indianapolis, IN-46268, proposes to establish a tolerance for residues of the insecticide chlorpyrifos in or on food commodities grass, forage (Crop group 17) at 11 parts per million (ppm); grass, hay (Crop group 17) at 30 ppm; barley, grain at 0.5 ppm; barley, straw at 2 ppm; barley, hay at 3 ppm; barley, milled feed fractions at 1 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; barley, grain at 0.5 ppm; and barley, grain at 0.5 ppm. Adequate enforcement methods are available for determination of chlorpyrifos residues in plant and animal commodities. The available Analytical Enforcement Methodology was previously reviewed in the June 20, 2000, Chlorpyrifos. Revised Product and Residue Chapters of the Health Effects Division (HED) Chapter of Reregistration Eligibility Decision (RED). Contact: Akiva Abramovitch, (703) 308–8328, *abramovitch.akiva@epa.gov.*

4. *PP 7F7208.* (EPA–HQ–OPP–2008–0132). Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide thiencarbazone-methyl (BYH 18636 - parent) as methyl 4-[(4,5-dihydro-3-methoxy-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl) carboxamidosulfonyl-5 methylthiophene-3-carboxylate (IUPAC nomenclature) in or on the food commodities field corn grain at 0.01 ppm; sweet corn kernels at 0.01 ppm; wheat grain at 0.01 ppm; and soybean seed at 0.01 ppm. Thiencarbazone-methyl (BYH 18636 parent and metabolites) as methyl 4-[(4,5-dihydro-3-methoxy-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl) carboxamidosulfonyl]-5-methylthiophene-3-carboxylate (IUPAC nomenclature) and metabolites BYH 18636-N-desmethyl, and BYH 18636-MMT-glucoside determined

individually and expressed in thiencarbazone-methyl equivalents in or on the food commodities field corn forage at 0.03 ppm; sweet corn forage at 0.15 ppm; field corn stover at 0.04 ppm; sweet corn stover at 0.04 ppm; pop corn stover at 0.04 ppm; sweet corn (k+cwhr) at 0.01 ppm; wheat,hay at 0.02 ppm; wheat,straw at 0.02 ppm; wheat,forage at 0.09 ppm; soybean,forage at 0.04 ppm; soybean,hay at 0.15 ppm; and cotton gin by-products at 0.15 ppm. Thiencarbazone-methyl (BYH 18636 parent and metabolites) as methyl 4-[(4,5-dihydro-3-methoxy-4-methyl-5-oxo-1H-1,2,4-triazol-1-yl) carboxamidosulfonyl]-5-methylthiophene-3-carboxylate (IUPAC nomenclature), and metabolite BYH 18636-MMT (expressed in thiencarbazone-methyl equivalents) are proposed based on the tissue to feed ratio as determined from the lactating dairy cow feeding study applied to a new diet calculated from the above proposed tolerances in or on the food commodities milk at 0.01 ppm; cattle, meat at 0.01 ppm; cattle, fat at 0.01 ppm; cattle, liver at 0.05 ppm; cattle, kidney at 0.02 ppm; goat, meat at 0.01 ppm; goat, fat at 0.01 ppm; goat, liver at 0.05 ppm; goat, kidney at 0.02 ppm; hog, meat at 0.01 ppm; hog, fat at 0.01 ppm; hog, liver at0.05 ppm; hog, kidney at 0.02 ppm; horse, meat at 0.01 ppm; horse, fat at 0.01 ppm; horse, liver at 0.05 ppm; horse, kidney at 0.02 ppm; sheep, meat at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, liver at 0.05 ppm; and sheep, kidney at 0.02 ppm. A high pressure liquid chromatography/triple stage quadrupole mass spectrometry (HPLC/MS/MS) method that employs the use of internal standards has been developed and validated for quantification of BYH 18636 analyte residues in plant matrices. The analytical method was developed for the determination of the residues of BYH18636 (parent), and its metabolites BYH18636-MMT-glucoside and -N-desmethyl in/on plant materials. The calculated limit of detection (LOD) ranges from 0.001 to 0.003 ppm. The limit of quantitation (LOQ) for this method is 0.01 ppm for each analyte in plant matrices. Contact: Hope A. Johnson, (703) 305–5410, *johnson.hope@epa.gov.*

5. *PP 7F7260.* (EPA–HQ–OPP–2008–0168). BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the insecticide metaflumizone in or on food commodities grape at 0.01 ppm; citrus fruits group (crop group 10) at 0.01 ppm; and tree nuts group (crop group 14) at 0.01 ppm. BASF Analytical Method No. 531/0 was developed to determine residues of metaflumizone and its metabolites M320I04 and M320I23, the residues of concern in plants, and in crop matrices. In this method, residues of metaflumizone are extracted from plant matrices with methanol/water (70:30; v/v) and then partitioned into dichloromethane. For oily matrices, the residues are extracted with a mixture of isohexane/acetonitrile (1:1; v/v). The final determination of metaflumizone and its metabolites is performed by liquid chromatography/mass spectrometry (LC/MS/MS). Contact: Julie Chao, (703) 308–8735, *chao.julie@epa.gov.*

6. *PP 7F7293.* (EPA–HQ–OPP–2008–0167). Syngenta Crop Protection Inc., P.O. Box 18300, Greensboro, NC 27419-8300, proposes to establish a tolerance for residues of insecticide thiamethoxam {3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine}(CAS Reg. No. 153719–23–4) and its metabolite [N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl-N'-nitro-guanidine] in or on food commodities fruit, citrus (Crop Group 10) at 0.3 ppm; and nut, tree (Crop Group 14) including pistachio at 0.3 ppm. Syngenta Crop Protection, Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. This method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detections. The limit of detection (LOD) for each analyte of this method is 1.25 ng injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantification (LOQ) is 0.005 ppm for milk and juices, and 0.01 ppm for all other substrates. Contact: Julie Chao, (703) 308–8735, *chao.julie@epa.gov.*

7. *PP 8F7328.* (EPA–HQ–OPP–2008–0217). Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to establish a tolerance for residues of the herbicide isoxaflutole 5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethylbenzoyl) isoxazole and its metabolite 1-(2-methylsulphonyl-4-trifluoromethylphenyl)-2-cyano-3-cyclopropyl propane-1,3-dione (RPA 202248), calculated as the parent compound in or on food commodities corn, field, grain corn at 0.02 ppm; corn, field, forage at 0.02 ppm; and corn, field, stover at 0.02 ppm. A practical analytical method has been developed for detecting and quantifying levels of Isoxaflutole and RPA 202248 in or on raw agricultural commodities obtained from field corn. This method allows monitoring of these commodities with residues at or above the levels proposed in this petition. Quantitation of analytes as individual components is performed by daughter-ion detection using liquid chromatography/mass spectroscopy (LC/MS/MS). The limit of quantitation (LOQ) for all analytes is 0.01 ppm. The proposed analytical enforcement method to determine isoxaflutole-derived residues in plants has been validated by an independent laboratory. Contact: Erik Kraft, (703) 308–9358, *kraft.erik@epa.gov.*

Amendment to Existing Tolerance

PPs 3F4188, 7F7248, and 3H5662. (EPA–HQ–OPP–2008–0173). Dow Agro Sciences LLC, 9330 Zionsville Road, Indianapolis, IN, 46268, proposes to amend the tolerances in 40 CFR 180.342 for residues of the insecticide chlorpyrifos in or on the food commodities cattle, fat at 0.6 ppm; goat, fat at 0.4 ppm; horse, fat at 0.5 ppm; hog, fat at 0.4 ppm; and sheep, fat at 0.4 ppm. Adequate enforcement methods are available for determination of chlorpyrifos residues in plant and animal commodities. The available Analytical Enforcement Methodology was previously reviewed in the June 20, 2000, Chlorpyrifos. Revised Product and Residue Chapters of the Health Effects Division (HED) Chapter of Reregistration Eligibility Decision (RED). Contact: Akiva Abramovitch, (703) 308–8328, *abramovitch.akiva@epa.gov.*

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 31, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–8003 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0234; FRL–8358–8]

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 May 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0234 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–2008–0234 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 7F7284	EPA–HQ–OPP–2008–0234

PP Number	Docket ID Number
PP 7F7285	EPA–HQ–OPP–2008–0234

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*.

Amendment to Existing Tolerance Exemptions

1. *PP 7F7284*. Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167, proposes to amend the tolerance exemption in 40 CFR 174.503 for residues of the plant-incorporated protectant *Bacillus thuringiensis* Cry2Ab2 protein and the genetic material necessary for its production in food and feed commodities of field corn, sweet corn, and popcorn. The petition includes a reference to a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed. Contact: Mike Mendelsohn, (703) 308–8715, *mendelsohn.mike@epa.gov*.

2. *PP 7F7285*. Monsanto Company, 800 North Lindbergh Blvd., St. Louis, MO 63167, proposes to amend the tolerance exemption in 40 CFR 174.502 for residues of the plant-incorporated protectant *Bacillus thuringiensis* Cry1A.105 protein and the genetic material necessary for its production in food and feed commodities of field corn, sweet corn, and popcorn. The petition includes a reference to a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed. Contact: Mike Mendelsohn, (703) 308–8715, *mendelsohn.mike@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 7, 2008.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E8–8013 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0026; FRL–8353–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Proposed AEGL Values; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs values on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides a list of 62 hazardous chemicals for proposed AEGL values that are available for public review and comment. Comments are welcome on both the proposed AEGL values and the Technical Support Documents placed in the public version of the official docket.

DATES: Comments must be received on or before May 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0026, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2008–0026. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0026. 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the 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, 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 OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Pollution Prevention and Toxics (7403M), Office of Pollution Prevention and Toxics , Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on proposed AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPAs Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. As such, 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 DFO 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 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. What Action is the Agency Taking?

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice in the **Federal Register** of October 31, 1995 (60 FR 55376) (FRL–4987–3) of the establishment of the NAC/AEGL Committee with the stated charter objective as "the efficient and effective development of AEGLs and the preparation of supplementary qualitative information on the hazardous substances for Federal, State, and Local agencies and organizations in the private sector concerned with [chemical] emergency planning, prevention, and response." The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGL values for hazardous chemicals through the combined efforts of stakeholder members from both the public and private sectors in a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available.

This action provides notice of availability, for public review and comment, of proposed AEGL values and underlying supporting documents for 62 hazardous chemicals. These AEGL values represent the 11th set of exposure levels proposed and published by the NAC/AEGL Committee. These 11 sets of AEGL values cover 239 hazardous chemicals. Background information on the AEGL Program may be found in the earlier **Federal Register** notices available in regulations.gov or on the AEGL website (*http://www.epa.gov/oppt/aegl*).

Following public review and comment, the NAC/AEGL Committee will reconvene to consider relevant comments, data, and information that may have an impact on the NAC/AEGL Committee's position and will again seek consensus for the establishment of interim AEGL values. Although the interim AEGL values will be available to Federal, State, and local agencies and to organizations in the private sector as biological reference values, it is intended to have them reviewed by a subcommittee of the National Academies (NAS). The NAS subcommittee will serve as a peer review of the interim AEGL values and as the final arbiter in the resolution of issues regarding the AEGL values, and the data and basic methodology used for setting AEGL values. Following concurrence, final AEGL values will be published under the auspices of NAS.

III. List of Chemicals

On behalf of the NAC/AEGL Committee, EPA is providing an opportunity for public comment on the proposed AEGL values for the 62 hazardous chemicals identified in the table in this unit. Technical Support Documents and key references may be obtained in the Docket described under **ADDRESSES**.

Chemical Name	CAS Number
1,2-Dibromoethane	106–93–4
2-Ethylhexyl chloroformate	24468–13–1
Acrylonitrile	107–13–1
Allyl chloride	107–05–1
Allyl chloroformate	2937–50–0
Allyl trichlorosilane	107–37–9
Amyl trichlorosilane	107–72–2
Benzyl chloroformate	501–53–1
Boron tribromide	10294–33–4
Bromine chloride	13863–41–7
Butyl trichlorosilane	7521–80–4
BZ (3-quinuclidinyl benzilate)	6581–06–2
Carbonyl fluoride	353–50–4
Carbonyl sulfide	463–58–1
Chlorobenzene	108–90–7
Chloromethyltrichlorosilane	1558–25–4
Chloropicrin	76–06–2
Chlorosulfonic acid	7790–94–5
Chlorotrifluroethylene	79–38–9
Dichlorosilane	4109–96–0
Diethyldichlorosilane	1719–53–5
Diketene	674–82–8
Dimethylamine	124–40–3
Dimethylchlorosilane	1066–35–9
Diphenyldichlorosilane	80–10–4
Docecyltrichlorosilane	4484–72–4
Ethyl chloroformate	541–41–3
Ethyl chlorothioformate	2941–64–2
Ethylamine	75–04–7
Ethylene chlorohydrin	107–07–3
Ethyltrichlorosilane	115–21–9
Hexyltrichlorosilane	928–65–4
Isobutyl chloroformate	543–27–1
Isopropyl chloroformate	108–23–6
Methacrylaldehyde	78–85–3
Methanesulfonyl chloride	124–63–0
Methyl amine	74–89–5
Methyl chloroformate	79–22–1
Methyl vinyl ketone	78–94–4
Methylvinyldichlorosilane	124–70–9
n-Butyl chloroformate	592–34–7
Nonyltrichlorosilane	5283–67–0
Octadecyltrichlorosilane	112–04–9
Octyltrichlorosilane	5283–66–9
Osmium tetroxide	20816–12–0
Oxygen difluoride	7783–41–7
Pentaborane	19624–22–7
Phenyl chloroformate	1885–14–9
Propyl chloroformate	109–61–5
Propyltrichlorosilane	141–57–1
sec-Butyl chloroformate	17462–58–7
Silicon tetrachloride	10026–04–7
Silicon tetrafluoride	7783–61–1
Stibine (Antimony hydride)	7803–52–3
Sulfuryl fluoride	2699–79–8
Tetrafluoroethylene	116–14–3
Thionyl chloride	7719–09–7
Trichloro(dichlorophenyl)silane	27137–85–5
Trichlorophenylsilane	98–13–5
Trichlorosilane	10025–78–2
Trimethylamine	75–50–3
Vinyltrichlorosilane	75–94–5

List of Subjects

Environmental protection, Acute Exposure Guideline Levels, Hazardous substances.

Dated: April 10, 2008.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E8–8184 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2004–0402; FRL–8359–6]

Pentachlorophenol Revised Risk Assessments; Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the restricted use antimicrobial pesticide pentachlorophenol (PCP) and its micro-contaminants, dioxin/furan (CDDs/CDFs) and hexachlorobenzene (HCB). In addition, this notice solicits public comment on risk reduction options for PCP and its micro-contaminants CDDs/CDFs and HCB, and an initial impacts and/or preliminary benefits assessment (Phase 5 of 6–Phase Process). The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for PCP through the full, 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before June 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2004–0402, 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–2004–

0402. 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: Sherrie Kinard, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvanía Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0563; fax number: (703) 308–6467; e-mail address: *kinard.sherrie@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. 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

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued for comment through a **Federal Register** notice published on March 30, 2005 (70 FR 16276) (FRL–7707–1); a response to comments; and related documents for pentachlorophenol. EPA also is soliciting public comment on potential risk reduction options for pentachlorophenol, and a preliminary benefits assessment for identified risks of concern. EPA developed the risk assessments for pentachlorophenol and its micro-contaminants, dioxins/furans and HCB, as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Pentachlorophenol is a general biocide which is used extensively in the United States (as is its salt, sodium pentachlorophenate or NaPCP) as a wood preservative. The production of pentachlorophenol for wood preserving began on an experimental basis in the 1930s. In 1947, nearly 7 million pounds of PCP were reported to have been used in the United States by the commercial wood preserving industry. Pentachlorophenol was one of the most widely used biocides in the United States prior to regulatory actions to cancel and restrict certain non-wood preservative uses in 1987. Prior to the 1987 Federal Register Notice (Vol. 52, No. 13) which cancelled and restricted certain non-wood uses of pentachlorophenol, it was registered for use as a herbicide, defoliant, mossicide, and as a disinfectant. The 1987 notice also specified maximum allowable amounts of HCB and dioxins/furans that

could be present in formulations of pentachlorophenol.

Indoor applications of pentachlorophenol are prohibited in accordance with the restrictions indicated in the *U.S.EPA Position Document 4 for Wood Preservative Pesticides: Creosote, Pentachlorophenol and Inorganic Arsenicals* (1984, amended 1986). The use of pentachlorophenol to treat wood intended for use in interiors is prohibited, except for a few low exposure uses (i.e., those support structures which are in contact with the soil in barns, stables, and similar sites and are subject to decay or insect infestation).

Pentachlorophenol is a restricted use pesticide for sale and use by certified applicators only. There are currently eight active products registered that contain pentachlorophenol (Chemical Code 063001). There are approximately 60 million utility-owned wood poles and 54 million crossarms in service across the United States that have been treated with wood preservatives (mainly pentaclorophenol and creosote). Approximately 36 million of the wood poles in service have been treated with pentachlorophenol, and approximately 96% of the crossarms in service were treated. An estimated 3% of the treated poles are replaced annually with freshly treated poles.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for pentachlorophenol and its micro-contaminants. Risks of concern associated with the use of pentachlorophenol are long-term dermal non-cancer risks for the pressure treatment operator mixing/loading/applying the liquid formulations and for the pressure treatment assistant mixing/loading/applying the liquid and the crystalline formulations. Dermal non-cancer risks of concern range from a MOE of 79 to a MOE of 230 with the target MOE of 300. Estimated cancer risks for handlers are of concern for the same 3 scenarios with cancer risks ranging from $4.9E^{-4}$ to $7.9E^{-5}$. Estimated cancer risks resulting from exposure to pentachlorophenols micro-contaminants dioxins/furans exceed the level of concern for the pressure treatment loader operator, pressure treatment test borer, general helpers, and electrical utility linemen. Cancer risks of concern range from $3.0E^{-5}$ to $8.0E^{-5}$ for these scenarios. In targeting these risks of concern, the Agency is soliciting information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, pentachlorophenol is being reviewed through the full 6–Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for pentachlorophenol. Comments received after the close of the comment period will be marked "late". EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the pentachlorophenol RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, Pentachlorophenol, Penta.

Dated: April 8, 2008.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

[FR Doc. E8–8174 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0258; FRL–8361–1]

Triadimefon; Notice of Receipt of Request to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel its registration for a product containing the pesticide triadimefon (EPA Registration No. 432–1294). The request would not terminate the last triadimefon product registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before May 16, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0258 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–2005–0258. 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: John W. Pates, Jr., Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8195; fax number: (703) 305-5290; e-mail address: *pates.john@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. What Should I Consider as I Prepare My Comments for EPA?

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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).

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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 on the Receipt of Request to Cancel Registrations

This notice announces receipt by EPA of a request from a registrant, Bayer Environmental Science, to cancel the product Bayleton 50 Turf and Ornamental Fungicide in WSP and (Bayleton 50 WP Fungicide) (EPA Registration No. 432–1294). The request will not terminate the last triadimefon products registered in the United States.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to cancel a triadimefon product registration. The affected product and the registrant making the request are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrant requests a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The triadimefon registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless the request is withdrawn by the registrant within 30 days of publication of this notice, or the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registration.

TABLE 1.—TRIADIMEFON PRODUCT REGISTRATION WITH PENDING REQUEST FOR CANCELLATION

Registration Number	Product Name	Company
432-1294	Bayleton 50 Turf and Ornamental Fungicide in WSP and Bayleton 50 WP Fungicide	Bayer Environmental Science

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company Number	Company Name and Address
432	Bayer Environmental Science 2 T.W. Alexander Drive Research Triangle Park, NC 27709

IV. 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.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of triadimefon

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before May 16, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

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.

In any order issued in response to this request for cancellation of a product registration, EPA proposes to include the following provisions for the treatment of any existing stocks of the products identified or referenced in Table 1 or 2 in Unit III., as follows:

Typically the Agency will permit a registrant to sell and distribute existing stocks for 1 year after the date the cancellation request was received. Such policy is in accordance with the Agency's statement of policy as set forth in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). However, in this case, because the registrant has provided information to the Agency that it is not likely that any remaining existing stocks are out in the channels of trade, the Agency does not believe that there is a need to permit the registrant to sell or distribute existing stocks for a period of one year. In addition, the Agency does not believe that there is a need for persons other than the registrant to continue to sell and/or use existing stocks of canceled products. The Agency believes that end users have had sufficient time to exhaust those existing stocks. Therefore, the last date for end use of the product will be effective on the date of publication of the cancellation order in the **Federal Register**.

If the request for voluntary cancellation is granted, the Agency intends to publish the cancellation order in the **Federal Register**. If the Agency receives comment that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will consider the comments. If needed, the Agency will make any changes to the existing stocks provisions in the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 9, 2008.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–7996 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0195; FRL–8358–5]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 14, 2008 or May 16, 2008 for registrations for which the registrant requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than October 14, 2008 or May 16, 2008, whichever is applicable. Comments must be received on or before October 14, 2008 or May 16, 2008, for those registrations where the 180–day comment period has been waived.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2008–0195, 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. Written Withdrawal Request, Attention: John Jamula, Information Technology and Resources Management Division (7502P).
- *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–2008–0195. 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: John Jamula, Information Technology and Resource Management Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, 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. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 407 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000004–00166	Bonide Oil & Lime Sulphur Spray	Aliphatic petroleum solvent
		Calcium polysulfide
000004–00402	Bonide Lime Sulfur Spray	Calcium polysulfide
000070–00291	Rigo Maneb Special Fungicide	Maneb
000100–00725	Logic Fire Ant Killer	Fenoxycarb

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000100–00746	Fenoxycarb 1% Bait	Fenoxycarb
000100–00750	Precision	Fenoxycarb
000100–00753	Fenoxycarb 25wp	Fenoxycarb
000100–00792	Mefenoxam PC	Pentachloronitrobenzene
		D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
000100 AL–07–0003	Zephyr 0.15EC	Abamectin
000100 AZ–96–0008	Mefenoxam EC	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
000100 AZ–96–0009	Mefenoxam EC	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
000100 CA–01–0008	Tough 5 EC	Pyridate
000100 CA–96–0013	Mefenoxam EC	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
000100 CA–96–0024	Ridomil Copper 70W	Copper hydroxide
		Metalaxyl
000100 CO–00–0009	Dividend XL Rta	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 CO–03–0011	Dividend Extreme Fungicide	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 FL–03–0007	Impasse Termite System	lambda-Cyhalothrin
000100 IA–00–0001	Mertect (r) 340-F Fungicide	Thiabendazole
000100 IA–99–0002	Tilt Fungicide	Propiconazole
000100 ID–01–0006	Tough 5 EC	Pyridate
000100 ID–03–0019	Dividend Extreme Fungicide	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 IL–00–0001	Tilt Fungicide	Propiconazole
000100 IL–04–0004	Tilt	Propiconazole
000100 IL–05–0002	Tilt	Propiconazole
000100 IN–01–0001	Tough 5 EC	Pyridate
000100 IN–99–0003	Tilt Fungicide	Propiconazole
000100 KS–03–0002	Tilt Fungicide	Propiconazole
000100 MN–04–0001	Dividend Extreme Fungicide	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 MN–99–0013	Dividend XL RTA	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000100 MN–99–0014	Tilt Fungicide	Propiconazole
000100 MT–01–0003	Tough 5 EC	Pyridate
000100 MT–03–0007	Dividend XL RTA	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 MT–03–0011	Dividend Extreme Fungicide	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 MT–04–0001	Dividend XL RTA	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 ND–00–0007	Tough 5 EC	Pyridate
000100 ND–02–0005	Bravo Ultrex	Chlorothalonil
000100 ND–04–0004	Dividend Extreme	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 ND–04–0005	Dividend XL RTA	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 NE–99–0006	Tilt Fungicide	Propiconazole
000100 OK–05–0006	Supracide 2e Insecticide-Miticide	Methidathion
000100 OR–01–0005	Tough 5 EC	Pyridate
000100 OR–04–0003	Orbit Fungicide	Propiconazole
000100 OR–04–0014	Princep Caliber 90 Herbicide	Simazine
000100 OR–04–0037	Dividend Extreme Fungicide	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 PR–93–0003	Diquat Herbicide	Diquat dibromide
000100 PR–97–0004	Fusilade DX Herbicide	Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-, butyl ester, (R)-
000100 TN–07–0001	Zephyr 0.15EC	Abamectin
000100 WA–01–0007	Tough 5 EC	Pyridate
000100 WA–02–0002	Ridomil Gold EC	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
000100 WA–02–0013	Bravo 720	Chlorothalonil
000100 WA–04–0009	Dividend Extreme Fungicide	D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester
		Difenoconazole
000100 WI–02–0008	Bravo 720	Chlorothalonil
000100 WI–02–0009	Bravo ZN	Chlorothalonil
000228–00318	Riverdale Triplet MC Dri Weed and Feed	Dicamba

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		2-4,D
		Mecoprop-P
000228–00320	Riverdale 638 Broadleaf Herbicide	2-4,D
		2,4-D, 2-ethylhexyl ester
000228–00376	Riverdale Millennium Ultra TM Weed and Feed	Dicamba
		2-4,D
		Clopyralid
000239–02594	Orthenex Insect & Disease Control Formula III	Acephate
		Fenbutatin-oxide
		Triforine
000239–02595	Isotox Insect Killer Formula IV	Acephate
		Fenbutatin-oxide
000241–00051	Cyprex 65-W Fruit Fungicide	Dodine
000241 CA–01–0027	Prowl 3.3 EC Herbicide	Pendimethalin
000241 ID–00–0003	Prowl 3.3 EC Herbicide	Pendimethalin
000241 ID–00–0007	Prowl 3.3 EC Herbicide	Pendimethalin
000241 ID–03–0009	Prowl 3.3 EC Herbicide	Pendimethalin
000241 ID–96–0007	Prowl 3.3 EC Herbicide	Pendimethalin
000241 MS–02–0002	Backdraft SL Herbicide	Glyphosate-isopropylammonium
		Imazaquin
000241 MS–02–0004	Onestep Herbicide	Glyphosate-isopropylammonium
		2-(4,5-Dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl)-3-pyridinecarboxylic acid
000241 OR–00–0032	Prowl 3.3 EC Herbicide	Pendimethalin
000241 OR–00–0033	Prowl 3.3 EC Herbicide	Pendimethalin
000241 OR–01–0004	Prowl 3.3 EC Herbicide	Pendimethalin
000241 OR–02–0003	Prowl 3.3 EC Herbicide	Pendimethalin
000241 OR–06–0009	Prowl H2o Herbicide	Pendimethalin
000241 OR–98–0020	Prowl 3.3 EC Herbicide	Pendimethalin
000241 PA–99–0002	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph
000241 VA–99–0003	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph
000241 WA–92–0034	Prowl 3.3 EC Herbicide	Pendimethalin
000241 WV–99–0001	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000264–00531	Buctril Gel	Bromoxynil octanoate
		Heptanoic acid, 2,6-dibromo-4-cyanophenyl ester
000264–00757	Summit S Flowable Fungicide	Sulfur
		Triadimefon
000264 AL–05–0001	Admire 2 Flowable Insecticide	Imidacloprid
000264 AL–05–0004	Baythroid 2 Emulsifiable Pytrethroid Insecticide	Cyfluthrin
000264 AZ–04–0002	Sencor DF 75% Dry Flowable Herbicide	Metribuzin
000264 AZ–04–0003	Admire 2 Flowable	Imidacloprid
000264 CA–00–0016	Baythroid 2 Emulsifiable Pyrethroid Insecticide	Cyfluthrin
000264 CT–05–0001	Admire 2 Flowable Insecticide	Imidacloprid
000264 GA–04–0009	Admire 2 Flowable Insecticide	Imidacloprid
000264 KY–04–0002	Admire 2 Flowable Insecticide	Imidacloprid
000264 LA–04–0012	Bayleton 50% Dry Flowable Fungicide	Triadimefon
000264 LA–05–0013	Baythroid 2 Emulsifiable Pyrethroid Insecticide	Cyfluthrin
000264 MI–95–0004	Baythroid 2	Cyfluthrin
000264 MN–97–0004	Bayleton 50% Wettable Powder	Triadimefon
000264 NY–01–0003	Sencor DF 75% Dry Flowable Herbicide	Metribuzin
000264 OH–02–0005	Guthion Solupak 50% Wettable Powder Insecticide	Azinphos-Methyl
000264 OR–03–0014	Admire 2 Flowable	Imidacloprid
000264 OR–03–0032	Admire 2 Flowable	Imidacloprid
000264 OR–04–0016	Bayleton 50% Wettable Powder	Triadimefon
000264 OR–04–0023	Stratego Fungicide	Propiconazole
		Trifloxystrobin
000264 OR–04–0028	Bronate 5 Herbicide	MCPA, 2-ethylhexyl ester
		Bromoxynil octanoate
		Heptanoic acid, 2,6-dibromo-4-cyanophenyl ester
000264 OR–98–0002	Sencor 4 Flowable Herbicide	Metribuzin
000264 OR–98–0019	Sencor 4 Flowable Herbicide	Metribuzin
000264 SC–04–0007	Axiom AT	Atrazine
		Metribuzin
		Flufenacet
000264 SD–04–0007	Axiom AT DF Herbicide	Atrazine
		Metribuzin
		Flufenacet
000264 WA–03–0028	Admire 2 Flowable	Imidacloprid

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000264 WA–03–0034	Admire 2 Flowable	Imidacloprid
000279 AL–90–0007	Capture 2 EC	Bifenthrin
000279 AR–05–0003	Capture 2 EC	Bifenthrin
000279 AR–90–0006	Capture 2 EC	Bifenthrin
000279 AZ–88–0025	Capture 2 EC	Bifenthrin
000279 CO–03–0006	Z-Cype 0.8 EC Insecticide	Zeta-Cypermethrin
000279 CO–03–0007	Z-Cype 0.8 EC Insecticide	Zeta-Cypermethrin
000279 FL–93–0006	Capture 2 EC	Bifenthrin
000279 GA–90–0003	Capture 2 EC	Bifenthrin
000279 ID–90–0006	Capture 2 EC Insecticide/miticide	Bifenthrin
000279 ID–90–0009	Capture 2 EC Insecticide/miticide	Bifenthrin
000279 LA–00–0008	Capture 2 EC Insecticide/miticide	Bifenthrin
000279 LA–90–0010	Capture 2 EC	Bifenthrin
000279 LA–91–0018	Furadan 4F	Carbofuran
000279 MS–90–0006	Capture 2 EC	Bifenthrin
000279 MS–98–0010	Talstar TC Flowable Termiticide/insecticide	Bifenthrin
000279 MT–90–0003	Capture 2 EC	Bifenthrin
000279 NV–89–0003	Capture 2 EC	Bifenthrin
000279 NV–92–0007	Capture 2 EC	Bifenthrin
000279 OK–90–0003	Capture 2 EC	Bifenthrin
000279 OR–01–0001	Capture 2 EC Insecticide/miticide	Bifenthrin
000279 OR–90–0008	Capture 2 EC	Bifenthrin
000279 OR–90–0009	Capture 2 EC	Bifenthrin
000279 OR–94–0041	Capture 2 EC Insecticide/miticide	Bifenthrin
000279 OR–96–0021	Capture 2 EC Insecticide/miticide	Bifenthrin
000279 SC–90–0002	Capture 2 EC	Bifenthrin
000279 TN–79–0012	Furadan 4 Flowable	Carbofuran
000279 TN–84–0004	Furadan 4 Flowable	Carbofuran
000279 TN–90–0005	Capture 2 EC	Bifenthrin
000279 TX–93–0005	Capture 2 EC	Bifenthrin
000279 UT–90–0003	Capture 2 EC	Bifenthrin
000279 VA–91–0001	Capture 2 EC	Bifenthrin
000279 WA–89–0010	Capture 2 EC	Bifenthrin
000279 WA–90–0001	Capture 2 EC	Bifenthrin
000279 WA–93–0005	Capture 2 EC	Bifenthrin
000279 WA–93–0008	Capture 2 EC	Bifenthrin
000279 WA–93–0009	Capture 2 EC	Bifenthrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000279 WY–03–0001	Capture 2 EC Insecticide/miticide	Bifenthrin
000352–00445	Dupont Finesse Herbicide	Chlorsulfuron
		Metsulfuron
000352–00516	Dupont Chlorsulfuron Technical	Chlorsulfuron
000352–00522	Dupont Glean Fertilizer Compatible Herbicide	Chlorsulfuron
000352–00620	Dupont Landmark 11 MP	Chlorsulfuron
		Sulfometuron
000352–00621	Dupont Landmark MP	Chlorsulfuron
		Sulfometuron
000352–00675	ETK-2301 Herbicide	Urea, sulfate (1:1)
		Glyphosate
000352 LA–01–0017	Velpar DF Herbicide	Hexazinone
000352 LA–03–0001	Dupont K-4 Herbicide	Diuron
		Hexazinone
000352 TX–99–0018	Volcano Leafcutter Ant Bait	Sulfluramid
000352 WI–01–0007	Vydate L Insecticide/nematicide	Oxamyl
000358–00105	Nott Chew-Not	Thiram
000400–00082	Omite - 30W	Propargite
000400 CA–81–0088	Omite 30w An Agricultural Miticide	Propargite
000400 CA–86–0070	Omite 30W An Agricultural Miticide	Propargite
000400 TX–94–0015	Fireban Granular Ornamental Insecticide	Tefluthrin
000432–00957	Preclaim EW Herbicide	Pendimethalin
		Fenoxaprop-p-ethyl
000432–00958	Preclaim EW Herbicide	Pendimethalin
		Fenoxaprop-p-ethyl
000432–00959	Preclaim EW Herbicide	Pendimethalin
		Fenoxaprop-p-ethyl
000499–00375	Whitmire PT 2100 Preclude IGR Insect Growth Regulator	Fenoxycarb
000524 AZ–05–0009	Bollgard	b.t. plus BXN Cottonseed
000524 AZ–05–0010	Bollgard II	b.t. plus BXN Cottonseed
000655–00602	Prentox Dormant Oil Spray Concentrate	Aliphatic petroleum solvent
000655–00795	Prentox Prenfish Grass Carp Management Bait	Piperonyl butoxide
		Rotenone
000655–00803	Prentox Common Carp Management Bait	Piperonyl butoxide
		Rotenone

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
000748–00246	W5347op Pilt "70" Plus Concentrate	Tributyltin oxide
000748–00248	W53471p Pilt "70" Plus Non-Conductive Concentrate	Tributyltin oxide
000748–00257	W53479 Pilt "70" Plus Nonconductive Ready To Use In Min	Tributyltin oxide
000748–00277	Pilt 77 Ready To Use	Carbamic acid, butyl-, 3-iodo-2-propynyl ester
000748–00292	Pilt-NF4 Concentrate	Carbamic acid, butyl-, 3-iodo-2-propynyl ester
000748–00301	Calbor Granules	Boron sodium oxide (B4Na2O7), pentahydrate
		Calcium hypochlorite
000748–00302	Calbor Tablets	Boron sodium oxide (B4Na2O7), pentahydrate
		Calcium hypochlorite
000748–00304	Calbor 55 Granules	Boron sodium oxide (B4Na2O7), pentahydrate
		Calcium hypochlorite
000748 HI–07–0004	Accu-Tab Blue Calcium Hypochlorite Tablets	Calcium hypochlorite
000769–00679	Dursban 1% Granular Insecticide	Chlorpyrifos
000802–00073	Lilly/miller Polysul Summer & Dormant Spray Concentrate	Calcium polysulfide
000869–00178	Green Light Com-Pleet	Prometon
000869–00212	Green Light Betasan 3.6 Granules	Bensulide
000961–00340	Lebanon Country Club 19-4-9 with Ronstar	Oxadiazon
000961–00371	Lebanon Country Club with Ronstar	Oxadiazon
000961–00382	Par Ex Slow Release Fertilizer Plus Ronstar	Oxadiazon
001021–00676	MGK Repellent 874	2-Hydroxyethyl octyl sulfide
001021–00933	Pyrocide Intermediate 6806	MGK 264
		Piperonyl butoxide
		Pyrethrins
001021–01129	D-Trans Intermediate 1869	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		Piperonyl butoxide
001021–01306	Pyrocide Fogging Concentrate 7211	Piperonyl butoxide
		Pyrethrins
001021–01384	Neo-Pynamin 80% Concentrate	Tetramethrin
001021–01470	Esbiothrin 90% Concentrate	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
001021–01544	Pyrocide Concentrate 7369	Piperonyl butoxide
		Pyrethrins
001021–01583	Multicide Concentrate 2519	d-Allethrin
		Piperonyl butoxide
		Phenothrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
001021–01598	Evercide Concentrate 2556	Esfenvalerate
001021–01612	Evergreen Growers Spray 7405	Pyrethrins
001021–01629	Evergreen Intermediate 7414	Pyrethrins
001021–01636	Evercide Esfenvalerate 35% Wettable Powder	Esfenvalerate
001021–01644	MGK Piperonyl Butoxide 8E 2630	Piperonyl butoxide
001021–01680	Multicide Intermediate 2734	MGK 264
		Phenothrin
001021–01711	Cycle Break Carpet Spray for Fleas & Ticks	Tetramethrin
		Phenothrin
		Pyriproxyfen
001021–01712	Larcore	Pyriproxyfen
001021–01713	Dalar	Pyriproxyfen
001021–01714	Sivad Fogger	MGK 264
		Pyrethrins
		Permethrin
		Pyriproxyfen
001021–01745	Evercide Permethrin Pour-On 2782	Permethrin
001021–01820	Turbocide Shroom Insecticide	Piperonyl butoxide
		Pyrethrins
001022–00511	Permatox SN-1 Wood Preservative	Tributyltin oxide
001022–00573	DCD Copper Sulfate	Copper sulfate pentahydrate
001381 MS–04–0008	Nufarm Credit Herbicide	Glyphosate-isopropylammonium
001381 MS–04–0009	Glyphosate 41%	Glyphosate-isopropylammonium
001381 MS–05–0025	Cornorstone/ R Ascal	Glyphosate-isopropylammonium
001381 MS–05–0026	Conerstone Plus or Rascal Re-Pack Plus	Glyphosate-isopropylammonium
001448–00436	STHR	Sodium bromide
		Sodium hypochlorite
001706–00137	Nalcon 7649	2,2-Dibromo-3-nitrilopropionamide
001706–00182	Perma Clean PC-11	2,2-Dibromo-3-nitrilopropionamide
002217 LA–99–0010	Acme Hi-Dep Herbicide	2,4-D, diethanolamine salt
		2,4-D, dimethylamine salt
002517–00037	Sergeant's Sentry Collar for Dogs	Dichlorvos
002517–00038	Sergeant's Sentry Collar for Cats	Dichlorvos
002596–00051	Hartz My-T-Mite Spray Non-Aerosol Fine Mist Spray	MGK 264
		Piperonyl butoxide
		Pyrethrins

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
002596–00055	Hamster & Gerbil Spray Mist	MGK 264
		Piperonyl butoxide
		Pyrethrins
002596–00069	Hartz Cat Flea & Tick Killer with Allethrin	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		MGK 264
		Phenothrin
002596–00070	Hartz Dog Flea & Tick Killer with Allethrin	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		MGK 264
		Phenothrin
002596–00095	Hartz Cat Flea & Tick Killer	MGK 264
		Piperonyl butoxide
		Pyrethrins
002596–00096	Hartz Dog Flea & Tick Killer	MGK 264
		Piperonyl butoxide
		Pyrethrins
002596–00097	Hartz 2 In 1 Flea Killer for Dogs/with Allethrin	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		MGK 264
		Phenothrin
002596–00098	Hartz 2 In 1 Flea & Tick Killer for Cats/with Allethrin	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		MGK 264
		Phenothrin
002596–00102	Hartz 2 In 1 Rid Flea Shampoo Concentrate for Dogs	MGK 264
		Piperonyl butoxide
		Pyrethrins
002596–00106	Hartz Fast Acting Roll-On Flea & Tick Killer	MGK 264
		Piperonyl butoxide
		Pyrethrins
002596–00112	Hartz 2 In 1 Luster Bath Mousse for Cats and Dogs	MGK 264
		Piperonyl butoxide
		Pyrethrins
002596–00141	Hartz Rabon Spray with Methoprene Aerosol Formulation	Gardona (cis-isomer)
		S-Methoprene
002935–00413	Nu-Flow ND	Chloroneb

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		2-(Thiocyanomethylthio)benzothiazole
002935–00414	Nu-Flow D	Chloroneb
003862–00121	White Magic	Alkyl* dimethyl benzyl ammonium chloride *(60%C14, 30%C16, 5%C18, 5%C12)
		Alkyl* dimethyl ethylbenzyl ammonium chloride *(68%C12, 32%C14)
004822–00292	Raid Flea Killer IV Plus	MGK 264
		Piperonyl butoxide
		Pyrethrins
		Tetramethrin
		Fenoxycarb
004822–00442	Raid D.O.B.	MGK 264
		Permethrin*
		Fenoxycarb
005481–00308	PCNB-Thiram 30-30 Seed Treat	Pentachloronitrobenzene
		Thiram
005481–00311	PCNB-Thiram 10-10 Seed Treat	Pentachloronitrobenzene
		Thiram
005481 NC–92–0002	Counter XL Systemic Insecticide Nematicide	Terbufos
005887–00154	Black Leaf Maneb Fungicide	Maneb
007173 KS–04–0004	Rozol Pocket Gopher Bait	Chlorophacinone
007173 WY–06–0004	Rozol Prairie Dog Bait	Chlorophacinone
007364–00096	Poolcare 100 Plus Algaecide	Copper ethanolamine complex
007401–00387	Ferti-Lome Pruning Sealer	Ethyl 1-naphthaleneacetate
007401 MS–81–0020	Hi-Yield Decimate Conc.	MSMA (and salts)
007401 MS–81–0021	Hi-Yield DSMA Liquid Herbicide	DSMA
007401 MS–81–0022	Hi-Yield DSMA Liquid Herbicide	DSMA
007401 MS–81–0023	Hi-Yield Super 3A.G.	MSMA (and salts)
007401 MS–81–0024	Hi-Yield Super Decimate+surfactant	MSMA (and salts)
007501–00162	Raxil 2.6fs Seed Treatment Fungicide	Tebuconazole
007501–00213	Ipconazole Metalaxyl MD (cs)	Metalaxyl
		Ipconazole
007501 AZ–05–0006	Gaucho 600 Flowable	Imidacloprid
007501 CO–05–0001	Enhance Vitavax Captan 20-20	Captan
		Carboxin
007501 ID–00–0017	Curzate 60DF	Cymoxanil
007501 MN–02–0009	Soygard L with Protege	Metalaxyl
		Azoxystrobin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
007501 ND–02–0014	Soygard L with Protege	Metalaxyl
		Azoxystrobin
007501 OR–03–0033	Enhance Vitavax - Captan 20-20	Captan
		Carboxin
007501 SD–03–0004	Soygard L with Protege	Metalaxyl
		Azoxystrobin
007501 WA–04–0001	Gustafson Vitavax Captan 20-20 Seed Protectant	Captan
		Carboxin
007969–00050	Pyramin FL Herbicide	Pyrazon
007969 KY–03–0006	Acrobat MZ Fungicide	Mancozeb
		Dimethomorph
008002–00001	Liquinox Start	1-Naphthaleneacetic acid
008329–00057	Abate 1-SG Insecticide	Temephos
008660–00044	Vertagreen Bordeaux Mixture	Copper sulfate pentahydrate
008660–00065	Vertagreen Copper Sulfate Crystals	Copper sulfate pentahydrate
008660–00156	Polyon Turf Fertilizer with Award Fire Ant Bait	Fenoxycarb
009444–00120	Total Release Fogger	MGK 264
		Piperonyl butoxide
		Pyrethrins
		Fenvalerate
009688–00099	Chemsico Vegetation Killer Concentrate	Prometon
009688–00100	Chemsico Vegetation Killer	Prometon
009779–00275	Riverside Cupric Hydroxide 4.5l	Copper hydroxide
009779–00298	Riverside Copper Hydroxide 77df	Copper hydroxide
009779–00339	Terranil CU	Copper oxychloride (Cu2Cl(OH)3)
		Chlorothalonil
010088–00111	Water Soluble Powdered Insecticide	Esfenvalerate
010159–00003	Hi Yield 3 A. G.	MSMA (and salts)
010163–00187	Botran 8% Dust	Dicloran
010163–00190	Botran 12% Dust Fungicide	Dicloran
010163–00192	Botran 10% Dust	Dicloran
010163–00193	Botran 4% Dust Fungicide	Dicloran
010163–00207	Botran 75wsb Fungicide	Dicloran
010163–00221	Botran Flowable Fungicide	Dicloran
010163–00256	Confuse-OFM	(Z)-8-Dodecen-1-yl acetate
		(E)-8-Dodecen-1-yl acetate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
		Dodecen-1-ol, (Z)-
010163–00257	Confuse-CM	(E,E)-8,10-Dodecadien-1-ol
010163–00258	Confuse-PTB	5-Decen-1-ol, (E)-
		5-Decen-1-ol, acetate, (E)-
010163–00259	Confuse-TPW	(Z)-4-Tridecen-1-yl acetate
		(E)-4-Tridecen-l-yl acetate
010163–00260	Confuse -OLR	(Z)-11-Tetradecenyl acetate
		11-Tetradecen-1-ol, acetate, (E)-
010163 TX–97–0001	Lorsban 50w Insecticide In Water Soluble Packets	Chlorpyrifos
010163 WA–96–0037	Diclor Fungicide	Dicloran
010806–00061	Contact Roach and Ant Killer VI	d-trans-Chrysanthemum monocarboxylic ester of dl-2-allyl-4-hydroxy-3-methyl-2-cyclopenten-1-
		MGK 264
		Piperonyl butoxide
		Fenvalerate
010806–00073	Contact Lawn Spray Concentrate for Fleas	Fenvalerate
010806–00074	Contact Lawn Spray Concentrate for Fleas II	Fenvalerate
010806–00087	Contact Roach and Ant Killer IX	MGK 264
		Pyrethrins
		Fenvalerate
010806–00093	Contact Ornamental Gypsy Moth and Japanese Beetle Spray	Piperonyl butoxide
		Tetramethrin
		Fenvalerate
010806–00094	Contact Roach and Ant Killer XI	d-Allethrin
		MGK 264
		Fenvalerate
011656–00051	Poly-Sul Fungicide-Insecticide-Miticide	Calcium polysulfide
019713–00387	Drexel Lindane Flowable	Lindane
019713–00401	Drexel Lindane 30%	Lindane
033068–00001	Aquashade	Acid Blue 9
		1H-Pyrazole-3-carboxylic acid, 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-((4-sulfophenyl)azo)-,
034704–00005	Clean Crop(r) Amine 4ca 2,4-D Weed Killer	2,4-D, dimethylamine salt
034704–00006	Clean Crop Lv-6 Ester Weed Killer	2,4-D, 2-ethylhexyl ester
034704–00084	Clean Crop Four Power Plus	Benzoic acid, 3,6-dichloro-2-methoxy-, compd with N-methylmethanamine (1:1)
		2,4-D, dimethylamine salt

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
034704–00111	Clean Crop Msma 6.6	MSMA (and salts)
034704–00112	Clean Crop Dsma 36	DSMA
034704–00113	Clean Crop Dsma Powder	DSMA
034704–00115	Clean Crop Msma 6 Plus	MSMA (and salts)
034704–00428	Kolodust 60 Fungicide-Miticide	Sulfur
034704–00644	Clean Crop Weed & Feed 2,4-D Granular	2,4-D, dimethylamine salt
034704 MS–06–0008	Permethrin	Permethrin
035935–00005	Nufarm 2,4-D LV-4	2,4-D, 2-ethylhexyl ester
035935–00014	Nufarm See 2,4-D	2,4-D, 2-ethylhexyl ester
035935–00017	Nufarm 2,4-D Amine 4	2,4-D, dimethylamine salt
035935–00018	Nufarm 2,4-D Amine 6	2,4-D, dimethylamine salt
035935–00028	U-46 D-Ester LV Herbicide	2,4-D, 2-ethylhexyl ester
044446–00009	Zot Wasp Spray Formula 2	Chevron 100
		Aliphatic petroleum solvent
		Resmethrin
045002–00004	Blue Shield DF	Copper hydroxide
045002–00005	Copper Hydroxide MUP	Copper hydroxide
045002–00007	Blue Shield	Copper hydroxide
045002–00014	Kocide 5 Dust	Copper hydroxide
045002–00016	Oxycop Dry Fungicide	Copper oxychloride sulfate
045002–00020	Kozinc WP	Copper hydroxide
045002–00022	Blue Shield 40 DF Fungicide/bactericide	Copper hydroxide
045002 HI–92–0012	Blue Shield	Copper hydroxide
046515–00024	Super K-GRO 3.75% Liquid Vegetation Killer	Prometon
046515–00025	Super K-GRO 1.5% Liquid Vegetation Killer	Prometon
046515–00037	K GRO Driveway & Patio Vegetation Killer Concentrate	Prometon
048273–00014	Pestban TC	Chlorpyrifos
050534 WI–02–0007	Bravo 825 Agricultural Fungicide	Chlorothalonil
051036–00026	Micro Flo Company/ 435 Soluble Oil	Aliphatic petroleum solvent
051036–00027	Micro Flo 455 Soluble Oil	Aliphatic petroleum solvent
051036–00139	Soluble Oil 97	Aliphatic petroleum solvent
051036 MP–06–0009	Chlorpyrifos 4# AG	Chlorpyrifos
051036 MS–06–0009	Chlorpyrifos 4E AG	Chlorpyrifos
057787–00018	Calcium Hypochlorite	Calcium hypochlorite
057787–00022	Algae Block	Barquat MS-100
059623 CA–82–0055	Dow Dursban 2E Insecticide	Chlorpyrifos

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
059639 AZ–79–0025	Orthene 75 S Soluble Powder	Acephate
059639 NC–87–0006	Orthene 75 S Soluble Powder	Acephate
059639 NC–93–0003	Orthene 75 S Soluble Powder	Acephate
059639 NJ–04–0002	Regiment Herbicide	Bispyribac-sodium
060061–00100	Woodlife F-4WT	Chlorpyrifos
		Carbamic acid, butyl-, 3-iodo-2-propynyl ester
060061–00108	Timbertreat 15 WT	Chlorpyrifos
060063 OR–98–0010	Echo 720 Agricultural Fungicide	Chlorothalonil
060063 OR–98–0011	Echo 90dF	Chlorothalonil
061483–00046	Rabon E.c. Livestock, Poultry and Premise Insecticide	Gardona (cis-isomer)
061483–00051	Tick & Flea Sponge-On for Dogs and Cats	Gardona (cis-isomer)
062719–00059	MCP Ester	MCPA, 2-ethylhexyl ester
062719 AZ–94–0003	Lorsban 50w Insecticide In Water Soluble Packets	Chlorpyrifos
062719 CA–94–0014	Lorsban 4E-HF	Chlorpyrifos
062719 CA–98–0016	Lorsban 15G	Chlorpyrifos
062719 CA–99–0004	Lorsban 15G	Chlorpyrifos
062719 ID–94–0012	Lorsban 4E-HF	Chlorpyrifos
062719 MO–89–0008	Lorsban 15G	Chlorpyrifos
062719 MO–94–0001	Lorsban 4E-HF	Chlorpyrifos
062719 OR–94–0034	Lorsban 4E-HF	Chlorpyrifos
062719 SC–02–0001	Lorsban 15G	Chlorpyrifos
062719 WA–94–0004	Lorsban 4E-HF	Chlorpyrifos
066222–00029	Cotoran + MSMA with Surfactant Herbicide	MSMA (and salts)
		Fluometuron
066222–00030	Cotoran 80WP Herbicide	Fluometuron
066222–00033	Cotoran DF	Fluometuron
066222–00034	Cotoron Accu-Pak	Fluometuron
066222 ID–05–0002	Rimon 0.83 EC	Novaluron
066222 KS–04–0007	Nations Ag II Mepiquat Chloride 4.2% Liquid	Mepiquat chloride
066222 MI–05–0003	Rimon 0.83 EC	Novaluron
066222 MS–05–0006	Glyphogan Herbicide	Glyphosate
066222 MS–05–0020	Abamectin 0.15 EC	Abamectin
066222 NC–05–0001	Rimon 0.83 EC	Novaluron
066222 OR–05–0007	Rimon 0.83 EC	Novaluron
066222 PA–05–0001	Rimon 0.83 EC	Novaluron
066222 VA–05–0001	Rimon 0.83 EC	Novaluron

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
066222 WI–05–0003	Rimon 0.83 EC	Novaluron
066222 WV–05–0001	Rimon 0.83 EC	Novaluron
066330–00028	Captan 80-WP	Captan
066330–00224	Chlorpyrifos 1/2% Bait	Chlorpyrifos
066330–00225	Micro Flo Chlorpyrifos Termite Concentrate	Chlorpyrifos
066330–00230	Micro Flo Chlorpyrifos 2E	Chlorpyrifos
066330–00231	Chlorpyrifos 1% Bait	Chlorpyrifos
066330–00232	Chlorpyrifos 4-E Insecticide	Chlorpyrifos
066330–00236	Captan 80 WP	Captan
066330–00249	Micro Flo Chlorpyrifos 4E Wood Treater	Chlorpyrifos
066330–00252	1% Chlorpyrifos Granule	Chlorpyrifos
066330–00255	2,4-Db 1.75 Broadleaf Herbicide	Dimethylamine 4-(2,4-dichlorophenoxy)butyrate
066330–00256	2,4-Db 200 Broadleaf Herbicide	Dimethylamine 4-(2,4-dichlorophenoxy)butyrate
066330–00261	Flo-Met 80DF	Fluometuron
066330–00263	Chlorpyrifos 2.5G	Chlorpyrifos
066330–00266	Chlorpyrifos 2E AG	Chlorpyrifos
066330–00268	Chlorpyrifos 1/2% Granule	Chlorpyrifos
066330–00269	Chlorpyrifos 2.32% Granule	Chlorpyrifos
066330–00279	Chlorpyrifos 4# Wheat	Chlorpyrifos
066330–00289	Captan 7.5 Dust	Captan
066330–00303	Captan 80 EG	Captan
066330 FL–94–0013	Capton 80 W	Captan
066330 MN–01–0008	Chlorpyrifos 4E AG	Chlorpyrifos
066330 ND–01–0002	Chlorpyrifos 4# AG	Chlorpyrifos
066330 OH–95–0002	Captan 80 WP	Captan
066330 PA–95–0006	Captan 80 WP	Captan
067619–00006	Cppc Tilex IMR	Sodium hypochlorite
067751 OR–94–0001	Select 2ec Herbicide	Clethodim
067760–00001	Fyfanon 5 EC	Malathion
067760–00003	Fyfanon 6% Malathion Grain Protector	Malathion
067760–00010	Cyren TC	Chlorpyrifos
067760–00015	Fyfanon Stored Grain Dust 1%	Malathion
067760–00065	Cheminova Acephate 75SP	Acephate
067760–00066	Cheminova Acephate 90SP	Acephate
070506–00077	Agvalue Pronamide Technical	Propyzamide
070506–00078	Break-Up 50 WP	Propyzamide
070506–00104	Metri 75 DF Turf Herbicide	Metribuzin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
070506 CA–99–0003	Desicate II	Endothall, mono(N,N,-dimethyl alkyl amine) salt
070506 ID–98–0013	Desicate II	Endothall, mono(N,N,-dimethyl alkyl amine) salt
070506 NV–98–0002	Desicate II	Endothall, mono(N,N,-dimethyl alkyl amine) salt
071654–00015	Guardall Iodine Disinfectant	Nonylphenoxypolyethoxyethanol - iodine complex
071654–00016	Bioguard 453	Alkyl* dimethyl benzyl ammonium chloride *(61% C12, 23% C14, 11% C16, 2.5% C18 2.5% C10 and
		Alkyl* dimethyl benzyl ammonium chloride *(58%C14, 28%C16, 14%C12)
071654–00018	Bioguard Gp Disinfectant-Sanitizer	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16)
071711 CA–04–0001	Applaud 70wp Insect Growth Regulator	Buprofezin
072639–00011	Goldengro TM R	Indole-3-butyric acid
		1-Naphthaleneacetic acid
		Cytokinin (as kinetin)
080225 AZ–05–0003	Eptam 7-E	Carbamothioic acid, dipropyl-, S-ethyl ester

A request to waive the 180–day comment period has been received for the following registrations: 400–82; 2517–37; 62719–59; CA–81–0088; CA–86–0070; 34704–5;34704–6; 34704–84; 34704–111; 34704–112; 34704–113;34704–115; 34704–428; and 34704–644.

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180-day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000004	Bonide Products, Inc., 6301 Sutliff Rd., Oriskany, NY 13424.
000070	Value Gardens Supply, LLC, d/b/a Garden Value Supply, P.O. Box 585, Saint Joseph, MO 64502.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000100	Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300.
000228	Nufarm Americas Inc., 150 Harvester Dr., Suite 200, Burr Ridge, IL 60527.
000239	The Ortho Business Group, d/b/a The Scotts Co., P.O. Box 190, Marysville, OH 43040.
000241	BASF Corp., P.O. Box 13528, Research Triangle Park, NC 27709–3528.
000264	Bayer Cropscience LP, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709.
000279	FMC Corp. Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103.
000352	E. I. Du Pont De Nemours & Co., Inc., Dupont Crop Protection (s300/427), P.O. Box 30, Newark, DE 19714–0030.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000358	Nott Products Co. Inc., P.O. Box 975, Coram, NY 11727.
000400	Chemtura Corp., Attn: Crop Registration, 199 Benson Rd. (2-5), Middlebury, CT 06749.
000432	Bayer Environmental Science, A Business Group of Bayer Cropscience LP, P.O. Box 12014, Research Triangle Park, NC 27709.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct. Industrial Blvd, St Louis, MO 63122–6682.
000524	Monsanto Co., Agent For: Monsanto Co., 1300 I St., NW, Suite 450 E., Washington, DC 20005.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001–2000.
000748	PPG Industries, Inc., Agent For: PPG Industries, Inc., 4325 Rosanna Dr., Allison Park, PA 15101.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
000769	Value Gardens Supply, LLC, d/b/a Value Garden Supply, P.O. Box 585, Saint Joseph, MO 64502.
000802	Registrations By Design, Inc., Agent For: Central Garden & Pet d/b/a Lilly Miller Brands, 1181/2 E. Main St., Suite 1, Salem, VA 24153–3805.
000869	Green Light Co., P.O. Box 17985, San Antonio, TX 78217.
000961	Lebanon Seaboard Corp., 1600 E. Cumberland St., Lebanon, PA 17042.
001021	Mclaughlin Gormley King Co., 8810 Tenth Ave., North, Minneapolis, MN 55427–4372.
001022	IBC Mfg. Co., c/o Gail Early, 416 E. Brooks Rd., Memphis, TN 38109.
001381	Alice Walker Consulting, Agent For: Winfield Solutions, LLC, 3094 Country Club Rd., Senatobia, MS 38668.
001448	Buckman Laboratories Inc., 1256 North Mclean Blvd., Memphis, TN 38108.
001706	Nalco Co., 1601 W. Diehl Rd., Naperville, IL 60563–1198.
002217	PBI/Gordon Corp., P.O. Box 014090, Kansas City, MO 64101–0090.
002517	Regguide, Agent For: Sergeant's Pet Care Products, Inc., 509 Tower Valley Drive, Hillsboro, MO 63050.
002596	The Hartz Mountain Corp., Attn: Robert Rosenwasser, 400 Plaza Drive, Secaucus, NJ 07094.
002935	Wilbur Ellis Co., P.O. Box 1286, Fresno, CA 93715.
003862	ABC Compounding Co, Inc., P.O. Box 16247, Atlanta, GA 30321–0247.
004822	S.C. Johnson & Son Inc., 1525 Howe St., Racine, WI 53403.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
005389	Ecolab Inc., Agent For: Kay Chemical Co., 370 N. Wabasha St., St. Paul, MN 55102.
005481	Amvac Chemical Corp., d/b/a Amvac, 4695 Macarthur Ct., Suite 1250, Newport Beach, CA 92660–1706.
005887	Value Gardens Supply, LLC, d/b/a Value Garden Supply, P.O. Box 585, Saint Joseph, MO 64502.
007173	Liphatech, Inc., 3600 W. Elm St., Milwaukee, WI 53209.
007364	GLB Pool & Spa, W175 N11163 Stonewood Dr., Suite 234, Germantown, WI 53022–4799.
007401	Voluntary Purchasing Groups, Inc., P.O. Box 460, 230 FM 87, Bonham, TX 75418.
007501	Gustafson LLC, P.O. Box 660065, Dallas, TX 75266.
007969	BASF Corp., Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
008002	Liquinox Co., 221 W. Meats Ave., Orange, CA 92665.
008329	Clarke Mosquito Control Products Inc., 159 N Garden Ave., Roselle, IL 60172.
008660	United Industries Corp., d/b/a Sylorr Plant Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
009444	Waterbury Companies Inc., P.O. Box 640, Independence, LA 70443.
009688	Chemsico, Div., of United Industries Corp., P.O. Box 142642, St Louis, MO 63114–0642.
009779	Winfield Solutions, LLC, P.O. Box 64589, St Paul, MN 55164–0589.
010088	Athea Laboratories Inc., P.O. Box 240014, Milwaukee, WI 53224.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
010159	Voluntary Purchasing Group Inc., P.O. Box 460, 230 FM 87, Bonham, TX 75418.
010163	Gowan Co., P.O. Box 5569, Yuma, AZ 853665569.
010806	Contact Industries, Div., of, Safeguard Chemical Corp., 411 Wales Ave., Bronx, NY 10454.
011656	Western Farm Service, Inc., Attn: Dunya Haproff-Fondse, P.O. Box 1168, Fresno, CA 93715–1168.
019713	Drexel Chemical Co., P.O. Box 13327, Memphis, TN 38113–0327.
033068	Aquashade, W175 N11163 Stonewood Dr., Suite 234, Germantown, WI 53022–4799.
034704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
035935	Nufarm Limited, Agent For: Nufarm Limited, P.O. Box 13439, Rtp, NC 27709.
044446	Quest Chemical Corp., 12255 F.M. 529 Northwoods Industrial Park, Houston, TX 77041.
045002	Albaugh, Inc., P.O. Box 2127, Valdosta, GA 31604–2127.
046515	Celex, Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
048273	Nufarm Inc., Agent For: Marman USA Inc., 150 Harvester Dr., Suite 200, Burr Ridge, IL 60527.
050534	GB Biosciences Corp., P.O. Box 18300, Greensboro, NC 27419–5458.
051036	BASF Sparks Llc, P.O. Box 13528, Research Triangle Park, NC 27709.
057787	Haviland Consumer Products, Inc., d/b/a Haviland Consumer Products, 421 Ann St., NW., Grand Rapids, MI 49504–2075.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
059623	California Dept. of Food & Agriculture O. Office of Pesticide Consultation & analysis, 1220 N. St., Rm. 444, Sacramento, CA 95814.
059639	Valent U.S.A. Corp., Agent For: Valent U.S.A. Corp., 1101 14th St., NW, Suite 1050, Washington, DC 20005.
060061	Kop-Coat, Inc., 436 Seventh Ave., Pittsburgh, PA 15219.
060063	Sipcam Agro USA, Inc., 300 Colonial Parkway, Suite 230, Roswell, GA 30076.
061483	KMG-Bernuth, Inc., 10611 Harwin Dr., Houston, TX 77036–1534.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd., 308/2E, Indianapolis, IN 46268–1054.
066222	Makhteshim-Agan of North America Inc., 4515 Falls of Neuse Rd., Suite 300, Raleigh, NC 27609.
066330	Arysta Lifescience North America Corp., 15401 Weston Parkway, Suite 150, Cary, NC 27513.
067619	Clorox Professional Products Co., P.O. Box 493, Pleasanton, CA 94566–0803.
067751	OMG Meadowfoam Oil Seed Growers, P.O. Box 4306, Salem, OR 97302.
067760	Cheminova Inc., 1700 Route 23 - Suite 300, Wayne, NJ 07470.
070506	United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King Of Prussia, PA 19406.
071654	E.I. Dupont De Nemours & Co., Dupont Chemical Solutions Enterprise, P.O. Box 80402, Wilmington, DE 19880–0402.
071711	Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company no.	Company Name and Address
072639	Pyxis Regulatory Consulting, Inc., Agent For: LT Biosyn, Inc., 4110 136th St., NW., Gig Harbor, WA 98332.
080225	Gowan Co., Agent For: Isilya Group Ltd., P.O. Box 5569, Yuma, AZ 85364.

III. 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. 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, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before October 14, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 2, 2008.

Oscar Morales

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E8–7623 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0302; FRL–8359–8]

Ethylene Oxide; Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide ethylene oxide (ETO). The Agency's risk assessments and other related documents also are available in the ETO Docket. ETO is used to sterilize medical or laboratory equipment, pharmaceuticals, and aseptic packaging, or to reduce microbial load on musical instruments, cosmetics, whole and ground spices or other seasoning materials and artifacts, archival material or library objects. In North Carolina, ETO is also used to fumigate beehive equipment (e.g., woodenware boxes and frames) and wax or plastic combs that are contaminated with the bacteria *Paenibacillus larvae*, the cause of American Foulbrood Disease. EPA has

reviewed ETO through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Susan Bartow, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 603-0065; fax number: (703) 308-8005; e-mail address: *bartow.susan@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 and human health 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–2005–0203. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, ETO under section 4(g)(2)(A) of FIFRA. ETO is used to sterilize medical or laboratory equipment, pharmaceuticals, and aseptic packaging, or to reduce microbial load on musical instruments, cosmetics, whole and ground spices or other seasoning materials and artifacts, archival material or library objects. In North Carolina, ETO is also used to fumigate beehive equipment (e.g., woodenware boxes and frames) and wax or plastic combs that are contaminated with the bacteria.

Paenibacillus larvae, the cause of American Foulbrood Disease. EPA has determined that the database to support reregistration is substantially complete and that products containing ETO are eligible for reregistration provided the risks are mitigated in the manner described in the RED. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing ETO.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, ETO was reviewed through the full 6–Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for ETO.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. During the reregistration process, the Agency has provided ample opportunity for public comment and stakeholder input through a full 6-Phase public participation process. The Agency therefore is issuing the ETO RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 3, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–7997 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2007-1078; FRL-8359-5]

Prometon; Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide prometon. The Agency's risk assessments and other related documents also are available in the prometon docket. Prometon is an herbicide used in industrial sites and under paved surfaces. EPA has reviewed prometon through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

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-2007-1078. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, prometon, under section 4(g)(2)(A) of FIFRA. Prometon is a non-selective herbicide intended to leave the treatment site bare and devoid of any vegetation. Products containing prometon can be used under block or solid paving, and at various industrial sites including pipelines, along fencerows, around building perimeters, cross connects, fire plugs, storage areas, fences, pumps, machinery, fuel tanks, recreational areas, guard rails, airports, military installations, highway medians, railroads, lumberyards, and rights-of-way. EPA has determined that the database to support reregistration is substantially complete and that products containing prometon are eligible for reregistration depending on their specific uses, provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing prometon.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's "Pesticide Tolerance Reassessment and Reregistration; Public Participation Process," published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL-7357-9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, minimal risks, and other factors, prometon was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for prometon.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. An additional comment period is not needed at this time, because few comments were received during the earlier comment period for this pesticide, and issues related to this pesticide were resolved through consultations with stakeholders. The Agency, therefore, is issuing the prometon RED without an additional comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration," before calling in product specific data on individual end-use products and either reregistering products or taking other "appropriate regulatory action."

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 3, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8-8001 Filed 4-15-08; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2004-0369; FRL-8359-4]

Chloroneb; Termination of Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the termination of certain uses, voluntarily requested by the registrants and accepted by the Agency, of products containing the pesticide chloroneb, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a December 28, 2007 **Federal Register** Notice of Receipt of Requests from the chloroneb registrants to voluntarily terminate certain uses of their chloroneb product registrations. The requests would terminate chloroneb's use on residential lawns and turf, as well as on lawns and turf at parks and schools. These are the last chloroneb products with these uses registered for use in the United States. In the December 28, 2007 notice, EPA indicated that it would issue an order implementing the cancellation to terminate certain uses, unless the Agency received substantive comments within the 30 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests within this period. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested termination on residential lawns and turf, as well as on lawns and turf at parks and schools. Any distribution, sale, or use of the chloroneb 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 April 16, 2008.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025; fax number: (703) 308–8005; e-mail address: *livingston.wilhelmena@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–2004–0369. 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 order to terminate chloroneb's use on residential lawns and turf, as well as on lawns and turf at parks and schools, as requested by the registrants, of chloroneb's products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—CHLORONEB PRODUCT REGISTRATIONS WITH TERMINATION OF CERTAIN USES

EPA Registration Number	Product Name
2217-692	Teremec SP Turf Fungicide
9198-182	ProTuf Fungicide II
9198-204	Andersons Golf Products Fungicide IX

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS OF CHLORONEB PRODUCTS WITH TERMINATION OF CERTAIN USES

EPA Company Number	Company Name and Address
2217	PBI/Gordon Corporation, 1217 West 12th Street, P.O. Box 014090, Kansas City, Missouri 64101-0090
9198	The Andersons Lawn Fertilizer Division, Inc., P.O. Box 119 Maumee, Ohio 43537

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 28, 2007 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellation to terminate certain uses of chloroneb.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellation to terminate certain uses of chloroneb registrations identified in Table 1 of Unit II. 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.

Registrant may sell and distribute existing stocks for one year from the date of the use termination request and allow persons other than the registrant to continue to sell and/or use existing stocks of cancelled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 3, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–8002 Filed 4–15–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–08–78–A (Auction 78); AU Docket No. 08–46; DA 08–767]

Auction of AWS–1 and Broadband PCS Licenses Scheduled for July 29, 2008; Comment Sought on Competitive Bidding Procedures for Auction 78

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of AWS–1 and Broadband PCS licenses with bidding scheduled to commence on July 29, 2008 (Auction 78). This document also seeks

comments on competitive bidding procedures for Auction 78.

DATES: Comments are due on or before April 18, 2008, and reply comments are due on or before April 25, 2008.

ADDRESSES: Comments and reply comments must be identified by AU Docket No. 08–46; DA 08–767. Comments may be filed electronically using the Internet by accessing the Federal Communications Commission's (Commission) Electronic Comment Filing System (ECFS) at *http://www.fcc.gov/cgb/ecfs*. Filers should follow the instructions provided on the Web site for submitting comments. The Wireless Telecommunications Bureau (Bureau) requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction78@fcc.gov*. In addition, comments and reply comments may be submitted by any of the following methods:

* Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. 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 the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, 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. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. 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 should be addressed to 445 12th Street, SW., 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 telephone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For auction legal questions: Scott Mackoul or Stephen Johnson at (202) 418–0660. For general auction questions: Lisa Stover at (717) 338–2868. Mobility Division: For broadband PCS service rule questions: Erin McGrath or Michael Connelly (legal) or Keith Harper (technical) at (202) 418–0620. Broadband Division: For AWS–1 service rule questions: John Spencer at (202) 418–2487.

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 78 Comment Public Notice released on April 4, 2008. The complete text of the Auction 78 Comment Public Notice, including attachments, and related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The Auction 78 Comment Public Notice and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 08–767. The Auction 78 Comment Public Notice and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/78/* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/*.

I. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces an auction of licenses in multiple radio services to commence on July 29, 2008. This auction, which is designated Auction 78, will include 55 licenses: 35 licenses in the Advanced Wireless Services (AWS) 1710–1755 MHz and 2110–2155 MHz bands (AWS–1) and 20 licenses in the broadband Personal Communications Service (PCS).

II. Licenses To Be Offered in Auction 78

2. The spectrum to be auctioned has been offered previously in other auctions but was unsold or returned to the Commission as a result of license cancellation or termination. A complete list of licenses available for Auction 78 is included as Attachment A of the Auction 78 Comment Public Notice.

A. License Descriptions

3. The Auction 78 Comment Public Notice displays informational tables (Tables 1, 2 & 3) regarding blocks, frequencies of licenses in these blocks, total bandwidth per block, geographic area type, and the number of each license type available.

i. AWS–1 Licenses

4. Auction 78 will offer 35 AWS–1 licenses for which there were no winning bids in Auction 66. These licenses consist of six Regional Economic Area Grouping (REAG) licenses, seven Economic Area (EA) licenses, and 22 Cellular Market Area (CMA) licenses.

ii. Broadband PCS Licenses

5. Auction 78 includes 20 Basic Trading Area (BTA) broadband PCS licenses. In broadband PCS, certain C and F block licenses have been subject to an eligibility restriction making them available only to entrepreneurs in closed bidding. In order to qualify as an entrepreneur, a bidder, along with its attributable investors and affiliates, must have had gross revenues of less than $125 million in each of the last two years and must have less than $500 million in total assets. In addition, C and F block licenses are divided into two tiers according to the population size, with Tier 1 comprising markets with population at or above 2.5 million, based on 2000 decennial census figures, and Tier 2 comprising the remaining markets. Only Tier 2 licenses will be offered in Auction 78.

6. Table 2 in the Auction 78 Comment Public Notice cross-references the general rules regarding block/eligibility status/frequencies of broadband PCS licenses in the C, D, E, and F blocks.

7. As indicated in Table 2 of the Auction 78 Comment Public Notice, C1, C2, C3, and C4 block licenses in Tier 2 are generally available only to entrepreneurs at auction in closed bidding. The Commission decided, however, no longer to apply this eligibility restriction to any of these licenses that have been previously made available on a closed basis, but not won, in any auction beginning on or after March 23, 1999. Such licenses are instead to be offered in open bidding. C5 block licenses and all D, E, and F block licenses are also available in open bidding. Bidding credits for applicants that qualify as small or very small businesses will be available for C and F block licenses subject to open bidding. These size-based bidding credits are not, however, available for C block licenses subject to closed bidding or for broadband PCS licenses in the D or E blocks.

8. The specific broadband PCS licenses to be offered in Auction 78 are

listed in Table 3 of the Auction 78 Comment Public Notice.

9. Because of the history of licenses for broadband PCS spectrum, certain of the licenses available in Auction 78 cover less bandwidth and fewer frequencies than noted in Table 3 of the Auction 78 Comment Public Notice. In addition, in some cases, licenses are available for only part of a market. Attachment A of the Auction 78 Comment Public Notice provides more details about the licenses that will be offered.

B. Incumbency Issues

i. AWS–1

10. The AWS–1 bands are now being used for a variety of government and non-government services. The 1710–1755 MHz band is currently a government band. The 2110–2150 MHz band is used by private services (including state and local governmental public safety services) and common carrier fixed microwave services. The 2150–2155 MHz band contains incumbents in the Broadband Radio Service (BRS). The Commission previously provided information on incumbency issues for the AWS–1 bands in the Auction 66 Procedures Public Notice 71 FR 20672, April 21, 2006. While much of that information remains current, several updates follow.

11. Spectrum Relocation Fund. The Commission established a reserve amount in Auction 66 in order to comply with a statutory requirement aimed at funding the relocation of federal government entities that currently operate in the 1710–1755 MHz band. In order for Auction 66 to close in compliance with the statute, the total winning bids in this auction, net of bidding credits applicable at the close of bidding, were required to equal or exceed a reserve amount of approximately $2.059 billion. At the close of Auction 66, the net total winning bids far exceeded the reserve amount. The Bureau proposes not to establish reserve prices for the 35 AWS–1 licenses being offered in Auction 78.

12. Relocation of Government Incumbents. The Commission also issued guidance, along with the National Telecommunications and Information Administration, to assist AWS–1 licensees to begin implementing service during the transition of federal operations from the band while providing interference protection to incumbent federal government operations until they have been relocated to other frequency bands or technologies.

13. Relocation of Non-Government Incumbents. On the same day it released the Auction 66 Procedures Public Notice, the Commission, among other things, adopted relocation procedures that AWS–1 licensees will follow when relocating incumbent BRS licensees from the 2150–2160/62 MHz portion of the band.

ii. Broadband PCS

14. While most of the private and common carrier fixed microwave services (FMS) formerly operating in the 1850–1990 MHz band (and other bands) have been relocated to available frequencies in higher bands or to other media, some FMS licensees may still be operating in the band. Any remaining FMS entities operating in the 1850–1990 MHz band, however, are secondary to PCS operations. FMS licensees, absent an agreement with the applicable PCS entities or an extension pursuant to 47 CFR 101.79(b), must turn in their authorizations six months following written notice from a PCS entity that such entity intends to turn on a system within the interference range of the incumbent FMS licensee. Further, broadband PCS licensees are no longer responsible for costs associated with relocating an incumbent FMS operation.

III. Bureau Seeks Comment on Auction Procedures

15. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed before issuance of bidding rules, to permit notice and comment on proposed auction procedures. Consistent with the provisions of Section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues relating to Auction 78.

A. Auction Design

i. Anonymous Bidding

16. Consistent with recent auctions, the Bureau proposes to withhold, until after the close of bidding, public release of: (1) Bidders' license selections on their short-form applications (FCC Form 175); (2) the amounts of bidders' upfront payments and bidding eligibility; and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. The Bureau proposes to withhold this information irrespective of any pre-auction measurement of likely auction competition.

17. Under these proposed limited information procedures, the amount of every bid placed and whether a bid was withdrawn would be disclosed after the close of every round, but the identities of bidders placing specific bids or withdrawals and the net bid amounts would not be disclosed until after the close of the auction.

18. Bidders will have access to additional information about their own bids. For example, bidders will be able to view their own level of eligibility, before and during the auction, through the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System).

19. Moreover, for the purpose of complying with the Commission's anti-collusion rule, bidders will be made aware of other bidders with which they will not be permitted to cooperate, collaborate, or communicate, including discussing bids or bidding strategies. Specifically, the Bureau will notify separately each applicant with short-form applications for participation in a pending auction, including but not limited to Auction 78, whether applicants in Auction 78 have applied for licenses in any of the same or overlapping geographic area as that applicant.

20. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions will be made publicly available.

21. The Bureau seeks comment on the details regarding its proposal for implementation of anonymous bidding in Auction 78, and on alternative proposals for the specific procedures to implement anonymous bidding.

ii. Auction Format

22. The Bureau proposes to auction all licenses included in Auction 78 using the Commission's standard simultaneous multiple-round (SMR) auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

23. Although package bidding was considered in Auction 66 and implemented for certain licenses made available in Auction 73, the Bureau

believes that a package bidding format is unlikely to offer significant advantages to bidders in Auction 78. This auction's inventory is composed of licenses in different services and frequency bands, and the geographic markets are generally not contiguous. As a result, it would not be possible to establish a significant regional or national footprint by acquiring several of these licenses as a package. Therefore, the Bureau believes that the use of the SMR format for Auction 78 would be the most appropriate means of auctioning the licenses in this inventory. Accordingly, the Bureau proposes to conduct the auction using its SMR auction format. However, if commenters believe that a package bidding design would offer significant benefits, the Bureau invites their comments and requests that they describe what specific factors lead them to that conclusion. If commenters believe that certain pre-defined packages should be offered in package bidding, they should describe those packages.

B. Auction Structure

i. Round Structure

24. Auction 78 will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

25. The Commission will conduct Auction 78 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

26. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

ii. Stopping Rule

27. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction 78, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Thus, unless the Bureau announces alternative stopping procedures, bidding will remain open on all licenses until bidding stops on every license. Consequently, it is not possible to determine in advance how long the auction will last.

28. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 78: (1) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (2) declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close; and (3) keep the auction open even if no bidder submits any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

29. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising certain of these options, the Bureau is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

iii. Information Relating to Auction Delay, Suspension, or Cancellation

30. For Auction 78, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

C. Auction Procedures

i. Upfront Payments and Bidding Eligibility

31. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. A bidder's upfront payment is a refundable deposit to establish eligibility to bid on licenses. Upfront payments related to the licenses for specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.

32. The Bureau proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment, on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses it selected on its short-form application (FCC Form 175) as long as the total number of bidding

units associated with those licenses does not exceed its current eligibility.

33. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

34. The Bureau proposes to calculate upfront payments in Auction 78 on a license-by-license basis, calculated by bandwidth and license area population, with a minimum of $500 per license. The Bureau proposes to use upfront payment formulas similar to those used in the most recent auctions for AWS–1 licenses (Auction 66) and broadband PCS licenses (Auction 71).

a. AWS–1

35. For AWS–1 licenses offered in Auction 78, the Bureau proposes upfront payments as follows: (1) For licenses covering CMAs or EAs in the 50 states, upfront payment amounts will be calculated as $0.03 per MHz per population (MHz-pop); (2) for the one available license that covers the Gulf of Mexico, the upfront payment amount will be $20,000; and (3) for all remaining licenses, upfront payment amounts will be calculated as $0.01/MHz-pop.

36. The proposed upfront payment amount and associated bidding units for each AWS–1 license available in Auction 78, calculated pursuant to these procedures, are set forth in Attachment A of the Auction 78 Comment Public Notice.

b. Broadband PCS

37. For broadband PCS licenses offered in Auction 78, the Bureau proposes upfront payments as follows: (1) For licenses covering BTAs in the 50 states, upfront payment amounts will be calculated as $0.03/MHz-pop; and (2) for all remaining licenses, upfront payment amounts will be calculated as $0.01/MHz-pop.

38. The proposed upfront payment amount and associated bidding units for each broadband PCS license available in Auction 78 are listed in Attachment A of the Auction 78 Comment Public Notice.

39. The Bureau seeks comment on the above proposals concerning upfront payment amounts and bidding units.

ii. Activity Rule

40. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

41. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureau seeks comment on these proposals.

42. The Bureau proposes the following activity requirements, while noting again that the Bureau retains the discretion to change stages unilaterally by announcement during the auction:

43. *Stage One:* In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4).

44. *Stage Two:* In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

45. Under this proposal, the Bureau will retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

iii. Activity Rule Waivers and Reducing Eligibility

46. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to particular licenses. Activity rule waivers can be either proactive or automatic and are principally a mechanism for bidders to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

47. The FCC Auction System assumes that a bidder not meeting the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

48. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule as

described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

49. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

50. Consistent with recent auctions of wireless spectrum, the Bureau proposes that each bidder in Auction 78 be provided with three activity rule waivers that may be used as set forth above at the bidder's discretion during the course of the auction. The Bureau seeks comment on this proposal.

iv. Reserve Prices and Minimum Opening Bids

51. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

52. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given amount. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

a. Reserve Prices

53. The Commission adopted a reserve price for the auction of AWS–1 licenses in Auction 66, but not for the auction of broadband PCS licenses in Auction 71. The reserve price in Auction 66 was adopted pursuant to 47 CFR 1.2104(c) and the Commercial Spectrum Enhancement Act (CSEA), which required the Commission to prescribe methods by which the total cash proceeds from any auction of licenses authorizing the use of eligible frequencies, such as 1710 to 1755 MHz, would equal at least 110 percent of the total estimated relocation costs of eligible federal entities. Given that one-half of the frequencies authorized for use by each license were CSEA eligible frequencies, one-half of each winning bid, net of any applicable bidding credit discounts at the end of bidding, was counted toward meeting the reserve price. At the conclusion of Auction 66, the net total winning bids exceeded the reserve amount established by the Commission.

54. Given that net winning bids exceeded the reserve price in Auction 66 and that there was no separate reserve price in Auction 71, the Bureau believes the public interest does not warrant establishing reserve prices for the licenses being offered in Auction 78. Therefore, the Bureau does not propose a reserve price for any licenses to be offered in Auction 78. However, if commenters believe that a reserve price would be in the public interest, the Bureau invites their comments and request that they describe what specific factors lead them to that conclusion.

b. Minimum Opening Bids

55. In light of Section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction 78. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

56. As in the most recent auctions, the Bureau proposes to calculate minimum opening bids in Auction 78 on a license-by-license basis, calculated by bandwidth and license area population, with a minimum of $500 per license. The Bureau proposes minimum opening bid formulas similar to those used in the most recent auctions for AWS–1 licenses (Auction 66) and broadband PCS licenses (Auction 71).

(i) AWS–1

57. For AWS–1 licenses offered in Auction 78, the Bureau proposes minimum opening bids as follows: (1) For licenses covering CMAs or EAs in the 50 states, minimum opening bid amounts will be calculated as $0.03/MHz-pop; (2) for the one available license that covers the Gulf of Mexico, the minimum opening bid amount will be $20,000; and (3) for all remaining licenses, minimum opening bid amounts will be calculated as $0.01/MHz-pop.

58. The proposed minimum opening bid amount for each AWS–1 license available in Auction 78, calculated pursuant to these procedures, is set forth in Attachment A of the Auction 78 Comment Public Notice.

(ii) Broadband PCS

59. For broadband PCS licenses offered in Auction 78, the Bureau proposes minimum opening bids as follows: (1) For licenses covering BTAs in the 50 states, minimum opening bid amounts will be calculated as $0.03/MHz-pop; and (2) for all remaining licenses, minimum opening bid amounts will be calculated as $0.01/MHz-pop.

60. The proposed minimum opening bid amount for each broadband PCS license available in Auction 78 is set forth in Attachment A of the Auction 78 Comment Public Notice.

61. The Bureau seeks comment on all of the above proposals concerning minimum opening bids. If commenters believe that these minimum opening bid amounts will result in unsold licenses, or are not reasonable amounts, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas.

62. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the licenses being auctioned. The Bureau also seeks comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amount.

63. Commenters may also wish to address the general role of minimum

opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—*e.g.*, by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—to other means of controlling auction pace, such as changes to bidding schedules or activity requirements.

v. Bid Amounts

64. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license.

a. Minimum Acceptable Bids

65. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

66. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round, based on an activity index. The activity index is a weighted average of: (a) The number of distinct bidders placing a bid on the license; and (b) the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bidders placing a bid on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined by adding one to the activity index, and multiplying that sum by a minimum percentage, with the result not to exceed a maximum percentage. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Bureau proposes initially to set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between ten percent and twenty percent higher than the provisionally winning bid, depending upon the bidding activity for the license. Equations and examples are shown in Attachment C of the Auction 78 Comment Public Notice.

b. Additional Bid Amounts

67. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage—more specifically, by multiplying the minimum acceptable bid by one plus successively higher multiples of the bid increment percentage. If, for example, the bid increment percentage is five percent, the calculation of the first additional acceptable bid amount is (minimum acceptable bid amount) * (1 + 0.05), or (minimum acceptable bid amount) * 1.05; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, or (minimum acceptable bid amount) * 1.1, etc. The Bureau will round the results of these calculations and the minimum acceptable bid calculations using the Bureau's standard rounding procedures. The Bureau proposes to set the bid increment percentage at 0.05.

68. For Auction 73, the Bureau determined that it would generally not provide, in that auction, for additional bid amounts for licenses not subject to package bidding, in light of the limited flexibility provided by additional bid amounts and the possibility that additional bid amounts could be used for signaling. The Bureau seeks comment on whether to start with no additional bid amounts or with eight additional bid amounts (for a total of nine bid amounts) for Auction 78. In particular, commenters should address the issue of additional bid amounts in light of particular circumstances of Auction 78, including the nature of the license inventory. The Bureau retains the discretion to change the minimum acceptable bid amounts, the additional bid amounts, the number of acceptable bid amounts, and the parameters of the formulas used to calculate minimum acceptable bid amounts and additional bid amounts if it determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis.

69. *The Bureau also retains the discretion to limit:* (a) The amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid; and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a $1 million limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if the activity-based formula calculates a minimum acceptable bid amount that is $2 million higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at $1 million above the provisionally winning bid. The Bureau seeks comment on the circumstances under which the Bureau should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing parameters of the activity-based formula, such as changing the minimum percentage. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

70. The Bureau seeks comment on the above proposals. If commenters disagree with the Bureau's proposal to begin the auction with one acceptable bid amount per license, they should suggest an alternative number of acceptable bid amounts to use at the beginning of the auction, an alternative number to use later in the auction, and whether the same number of bid amounts should be used for each of the blocks, licenses, and services. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

vi. Provisionally Winning Bids

71. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to

end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

72. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal

73. For Auction 78, the Bureau proposes and seeks comment on the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively undo any of its bids placed within that round. In contrast to the bid withdrawal provisions described in subsection viii, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

viii. Bid Withdrawal

74. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules.

75. In the Part 1 Third Report and Order, 63 FR 2315, January 15, 1998, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

76. For Auction 78, the Bureau proposes to allow each bidder to withdraw provisionally winning bids in only one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that may be withdrawn during that round. Otherwise, withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in 47 CFR 1.2104(g). The Bureau seeks comment on these bid withdrawal procedures. If commenters believe that each bidder should be allowed to withdraw provisionally winning bids in more than one round during the course of the auction, they should state how many bid withdrawal rounds they seek and explain what specific factors lead them to that conclusion.

D. Post-Auction Procedures

i. Interim Withdrawal Payment Percentage

77. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with its interest in deterring abuses of its bidding procedures, the Bureau proposes an interim bid withdrawal payment level of fifteen percent for Auction 78.

78. The Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). If a bid is withdrawn and no subsequent higher bid is placed and/or the license is not won in the same auction, the final withdrawal payment cannot be calculated until after the close of a subsequent auction in which a higher bid for the license (or the equivalent to the license) is placed or the license is won. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. 47 CFR 1.2104(g)(1) requires that the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment be between three percent and twenty percent and that it be set in advance of the auction.

79. The Commission has determined that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission has noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate the licenses being offered in the auction, such as when few licenses are offered that are on adjacent frequencies or in adjacent areas, or when there are few synergies to be captured by combining licenses. Under this rationale, the Bureau chose an interim bid withdrawal payment level of fifteen percent for Auction 71, while the Bureau adopted a level of ten percent in Auction 66.

80. For Auction 78, the opportunities for combining licenses on adjacent frequencies or in adjacent areas are more limited than was the case in Auction 66, and thus, there is likely to be little need to use withdrawals to protect against incomplete aggregations. Therefore, the Bureau proposes to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at fifteen percent for this auction for licenses in both services. The Bureau seeks comment on this proposal.

ii. Additional Default Payment Percentage

81. Any winning bidder that, after the close of an auction, defaults—by, for example, failing to remit the required down payment within the prescribed period of time, to submit a timely long-form application, or to make full payment—or is otherwise disqualified is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

82. Under 47 CFR 1.2104(g)(2), the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of three percent up to a maximum of twenty percent. The level of this payment in each case will be based on the nature of the service and

the inventory of the licenses being offered.

83. In the recent auctions of AWS–1 and broadband PCS licenses (Auctions 66 and 71), the additional default payment was ten percent.

84. Defaults weaken the integrity of the auctions process and impede the deployment of service to the public, and an additional default payment of more than the previous three percent will be more effective in deterring defaults. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction 78 are likely to be unusually great. Balancing these considerations, the Bureau proposes an additional default payment of ten percent of the relevant bid for Auction 78. The Bureau seeks comment on this proposal.

IV. Deadlines and Filing Procedures

85. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E8–8178 Filed 4–15–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or tradeanalysis@fmc.gov).

Agreement No.: 002206–005.

Title: California Association of Port Authorities—Northwest Marine Terminal Association Terminal Discussion Agreement.

Parties: California Association of Port Authorities and Northwest Marine Terminal Association.

Filing Party: Patti A. Fulghum, Executive Officer; Northwest Marine Terminal Association; PO Box 5684; Bellevue, WA 98006.

Synopsis: The amendment adds Port of Coos Bay as a member to the agreement.

Agreement No.: 009335–006.

Title: Northwest Marine Terminal Association, Inc. Agreement.

Parties: Port of Anacortes; Port of Astoria; Port of Bellingham; Port of Coos Bay; Port of Everett; Port of Grays Harbor; Port of Kalama; Port of Longview; Port of Olympia; Port of Port Angeles; Port of Portland; Port of Seattle; Port of Tacoma; and Port of Vancouver, USA.

Filing Party: Patti A. Fulghum; Executive Officer; Northwest Marine Terminal Association, Inc.; P.O. Box 5684; Bellevue, WA 98006.

Synopsis: The amendment adds Port of Coos Bay as member to the agreement.

Agreement No.: 012005–001.

Title: CSCL/CMA CGM Slot Charter and Cross Slot Charter Agreement on Amerigo Express Service and Victory BridgeAgreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; and CMA CGM, S.A.

Filing Party: Tara L. Leiter, Esq.; Blank Rome, LLP; Watergate; 600 New Hampshire Avenue NW; Washington, DC 20037.

Synopsis: The amendment reduces the number of slots for purchase and modifies the terms and conditions under which Parties will cross charter space.

Agreement No.: 012039.

Title: ELJSA / CSCL NUE Slot Charter Agreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; and Evergreen Line.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane, Vencrow & Textor, LLP; 61 Broadway, Suite 3000; New York, NY 10006.

Synopsis: Agreement authorizes CSCL to charter space from ELJSA between the U.S. East Coast and ports in Germany, France, Holland, Belgium and the United Kingdom.

Dated: April 11, 2008.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–8171 Filed 4–15–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Global Cargo Group, Inc. dba ACI Logistics, 9300 NW 25 Street, Miami, FL 33172. Officers: Andres Hernandez, Vice President (Qualifying Individual); Maria Hernandez, President.

Dated: April 11, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–8172 Filed 4–15–08; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 001575F.
Name: AEC International, Inc.
Address: 11931 Seventh Street, Houston, TX 77072.
Date Revoked: March 28, 2008.
Reason: Failed to maintain a valid bond.

License Number: 012572NF.
Name: AFT International Freight Systems, Inc.
Address: 20 West Lincoln Ave., Ste. 206, Valley Stream, NY 11580.
Date Revoked: March 24, 2008.
Reason: Surrendered license voluntarily.

License Number: 004299F.
Name: CNC Shipping International, Inc.
Address: 7774 NW. 71st Street, Miami, FL 33166.
Date Revoked: March 9, 2008.
Reason: Failed to maintain a valid bond.

License Number: 015795N.
Name: Eurocargo Express, LLC, dba Eurocargo.
Address: 5250 West Century Blvd., Ste. 620, Los Angeles, CA 90045.
Date Revoked: March 28, 2008.
Reason: Failed to maintain a valid bond.

License Number: 013396N.
Name: Global Forwarding Ltd.
Address: Symal House, 423 Edgware Rd., London NW9 OHU, United Kingdom.
Date Revoked: March 23, 2008.
Reason: Failed to maintain a valid bond.

License Number: 020155N.
Name: Jamteck International Shipping, Inc.
Address: 4633 Richardson Ave., Bronx, NY 10470.
Date Revoked: March 6, 2008.
Reason: Failed to maintain a valid bond.

License Number: 003699F.
Name: Lee's Material Services, Inc.
Address: 5810 Star Lane, Houston, TX 77057.
Date Revoked: March 20, 2008.
Reason: Surrendered license voluntarily.

License Number: 004076F.
Name: Marimar Forwarding, Inc.
Address: 806 NW. 131st Ave., Miami, FL 33182.
Date Revoked: March 14, 2008.
Reason: Failed to maintain a valid bond.

License Number: 003950N.
Name: Ocean-5 Express Line, Inc.
Address: 10545 Bianca Ave., Granada Hills, CA 91344.
Date Revoked: March 21, 2008.
Reason: Failed to maintain a valid bond.

License Number: 019330NF.
Name: Riverside Logistics, Inc.
Address: 8014 Midlothian Turnpike, Ste. 319, Richmond, VA 23235.
Date Revoked: March 28, 2008.
Reason: Surrendered license voluntarily.

License Number: 011170F.
Name: Sage Freight System, Inc., dba Sage Container Lines.
Address: 182–30 150th Rd., #108, Jamaica, NY 11413.
Date Revoked: March 5, 2008.
Reason: Failed to maintain a valid bond.

License Number: 001483NF.
Name: Tokyo Express Co., Inc.
Address: 26 O'Farrell Street, Ste. 900, San Francisco, CA 94108.
Date Revoked: March 5, 2008.
Reason: Surrendered license voluntarily.

License Number: 001066F.
Name: Transglobal Trade Resources, Inc.
Address: 6001 Chatham Center, Orlean Bldg., Ste. 350, Savannah, GA 31406.
Date Revoked: March 28, 2008.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E8–8170 Filed 4–15–08; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

Summary:

Background

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

For Further Information Contact: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

1. *Report titles:* Application for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; Notification for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company; and Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities.
Agency form numbers: FR Y–3, FR Y–3N, and FR Y–4.
OMB control number: 7100–0121.
Frequency: Event generated.
Reporters: Corporations seeking to become bank holding companies (BHCs), or BHCs and state chartered banks that are members of the Federal Reserve System.
Annual reporting hours: 22,920 hours.
Estimated average hours per response: FR Y–3 Section 3(a)(1): 49 hours; FR Y–3. Section 3(a)(3) and 3(a)(5): 59.5 hours; FR Y–3N Section 3(a)(1), 3(a)(3), and 3(a)(5): 5 hours; FR Y–4 Complete notification: 12 hours; FR Y–4 Expedited notification: 5 hours; and FR Y–4 Post-consummation: 30 minutes.
Number of respondents: 674.
General description of report: This information collection is mandatory (12 U.S.C. 1842(a), 1844(b), and 1843(j)(1)(b)). The forms are designed so that all information contained in a filing is available to the public unless the applicant, notificant, or individual(s) can substantiate that an exemption under the Freedom of Information Act (FOIA) is satisfied.
Abstract: The Federal Reserve requires the submission of these filings for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company Act of 1956. These filings collect information on proposals by bank holding companies involving formations, acquisitions, mergers, and nonbanking activities. The Federal Reserve must obtain this information to evaluate each individual transaction with respect to financial and managerial factors, permissibility, competitive effects, net public benefits, and the impact on the convenience and needs of affected communities.
Current Actions: On February 4, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 6515) requesting public comment for sixty days on the extension, with revision, of the application and notification forms.

The comment period for this notice expired on April 4, 2008. The Federal Reserve did not receive any comment letters. The revisions will be implemented as proposed.

2. *Report title:* International Applications and Prior Notifications under Subparts A and C of Regulation K.

Agency form number: FR K–1.

OMB control number: 7100–0107.

Frequency: Event generated.

Reporters: State member banks, Edge and agreement corporations, bank holding companies, and certain foreign banking organizations.

Annual reporting hours: 889 hours.

Estimated average hours per response: Attachments A and B, 11.5 hours; Attachments C through G, 10 hours; Attachments H and I, 15.5 hours; Attachment J, 10 hours; Attachment K, 20 hours.

Number of respondents: 29.

General description of report: This information collection is mandatory (12 U.S.C. 601–604(a) and 611–631)) and (12 U.S.C. 1843(c)(13), 1843(c)(14) and 1844(c)). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for an FOIA exemption.

Abstract: Subpart A of Regulation K governs the foreign investments and activities of member banks, Edge and agreement corporations, bank holding companies, and certain investments by foreign organizations. Subpart C of Regulation K governs investments in export trading companies. The FR K–1 information collection contains eleven attachments for the application and notification requirements embodied in Subparts A and C of Regulation K. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.

Current Actions: On February 4, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 6515) requesting public comment for sixty days on the extension, with revision, of the application and notification forms. The comment period for this notice expired on April 4, 2008. The Federal Reserve did not receive any comment letters. The revisions will be implemented as proposed.

3. *Report titles:* Consumer Satisfaction Questionnaire; Federal Reserve Consumer Help Center Survey; and Federal Reserve Consumer Help Online Complaint Form.

Agency form numbers: FR 1379a, FR 1379b, and FR 1379c.

OMB control number: 7100–0135.

Frequency: Event generated.

Reporters: Consumers.

Annual reporting hours: 2,037 hours.

Estimated average hours per response: FR 1379a: 5 minutes; FR 1379b: 5 minutes; FR 1379c: 10 minutes.

Number of respondents: FR 1379a: 2,640; FR 1379b: 1,800; FR 1379c: 10,000.

General description of report: This information collection is voluntary and authorized by law (15 U.S.C. 57(a)(f)(1)). While the individual respondent's information is confidential, once such information has been aggregated, the aggregated information is not considered confidential. The information may be aggregated with responses from other respondents and released in statistical format while maintaining the privacy of the individual respondents. If a respondent provides information not specifically solicited on the form, that information may be exempt from disclosure under FOIA (5 U.S.C. § 552(b)(4), (b)(6), or (b)(7)) upon specific request from the respondent.

Abstract: The FR 1379 questionnaires are sent to consumers who have filed complaints with the Federal Reserve against state member banks. The information gathered on the questionnaires is used to determine whether consumers are satisfied with the way the Federal Reserve Bank handled their complaints and to solicit suggestions for improving the complaint investigation process.

Current Actions: On February 4, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 6515) requesting public comment for sixty days on the extension, with revision, for the FR 1379a, b, c questionnaires. The comment period expired on April 4, 2008. The Federal Reserve did not receive any comment letters. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, April 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–8115 Filed 4–15–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Dart Financial Corporation, Mason, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Dart Bank, Mason, Michigan.

2. Black River BancVenture, Inc., Memphis, Tennessee; Spence Limited, L.P., Nashville, Tennessee; and Financial Junk, L.L.C., Nashville, Tennessee; to each acquire 22 percent of the voting shares of Alliant Bank, Sedgwick, Kansas; 9 percent of the voting shares of Farmers Savings Bank, Keota, Iowa; 20 percent of the voting shares of Gorham State Bank, Gorham, Kansas; 10 percent of the voting shares of Greensburg State Bank, Greensburg, Kansas; 8 percent of the voting shares of Kansas State Bank, Overbrook, Kansas; 15 percent of the voting shares of Leonardville State Bank, Leonardville, Kansas; 8 percent of the voting shares of Marquette Farmers State Bank, Marquette, Kansas; and 19 percent of the voting shares of Community Shores Bank Corporation, Muskegon, Michigan, and thereby indirectly acquire voting

shares of Community Shores Bank, Muskegon, Michigan; 15 percent of the voting shares of Allegiance Bank of North America, Bala Cynwyd, Pennsylvania; 15 percent of the voting shares of Bay Commercial Bank, Walnut Creek, California; 9.90 percent of the voting shares of Cornerstone Bank, Moorestown, New Jersey.

Applicants also have applied to acquire 6 percent of the voting shares of SFB Bancorp, Inc., Elizabethon, Tennessee, and indirectly acquire Security Federal Bank, Elizabethon, Tennessee, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii), and 9.9 percent of the voting shares of Quaint Oak Bancorp, Southampton, Pennsylvania, and indirectly acquire Quaint Oak Bank, Southampton, Pennsylvania, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

3. Spence Limited, L.P., Nashville, Tennessee, and Financial Junk, L.L.C., Nashville, Tennesse, to become bank holding companies by acquiring 48 percent of the voting shares of Michigan Community Bancorp, Ltd., and thereby indirectly acquire Lakeside Community Bank, both of Sterling Heights, Michigan.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. First Financial Bancshares, Inc., Lawrence, Kansas; to acquire 100 percent of the voting shares of Great American Bank, De Soto, Kansas.

Board of Governors of the Federal Reserve System, April 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–8112 Filed 4–15–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E8–7645) published on pages 19851–19852 of the issue for Friday, April 11, 2008.

Under the Federal Reserve Bank of St. Louis heading, the entry for Reliable Community Bancshares, Inc., Perryville, Missouri, is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Reliable Community Bancshares, Inc., Perryville, Missouri; to acquire 100 percent of the voting shares of Countryside Bancshares, Inc., and thereby indirectly acquire Countryside Bank, both of Republic, Missouri.

In connection with this application, Countryside Acquisition Corporation, also has applied to become a bank holding company by acquiring 100 percent of the voting shares of Countryside Bancshares, Inc., and thereby indirectly acquire Countryside Bank, all of Republic, Missouri.

Comments on this application must be received by May 5, 2008.

Board of Governors of the Federal Reserve System, April 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–8113 Filed 4–15–08 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Multiple Award Schedule Advisory Panel; Notification of Public Advisory Panel Meetings

AGENCY: U.S. General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The U.S. General Services Administration (GSA) Multiple Award Schedule Advisory Panel (MAS Panel), a Federal Advisory Committee, will hold public meetings on the dates and times given below to discuss the multiple award schedules (MAS) program. GSA utilizes the Schedules program to establish long-term Governmentwide contracts with responsible firms to provide Federal, State, and local government customers with access to a wide variety of supplies (products) and services.

The MAS Panel will develop advice and recommendations on MAS program pricing policies, provisions, and procedures in the context of current commercial pricing practices. Specifically, the MAS Panel will review the MAS policy statements, implementing regulations, solicitation provisions and other related documents regarding the structure, use, and pricing for the MAS contract awards.

DATES: *Initial meeting:* The initial meeting of the MAS Panel will take place on Monday, May 5, 2008, beginning at 10 a.m. and adjourning no later than 5 p.m.

Second Meeting: The second meeting for the Panel is scheduled for Thursday, May 22, 2008, 9 a.m. to 5 p.m.

ADDRESSES: *Initial meeting:* The initial meeting location is AIA Building, 2nd Floor, 1725 New York Avenue, NW., Washington, DC. The building is at the corner of 18th Street and New York Avenue. Entrance to the building is on either 18th Street or New York Avenue.

Second Meeting: The second meeting will be held at the General Services Administration, 1800 F Street, NW., 1st Floor Auditorium, Washington, DC 20405. Please enter the GSA building on F Street at the center of the block. The Auditorium is on the street level to the left inside the entrance. GSA is a secure facility and proper Government issued identification is required for entry. Please allow sufficient time for building entry procedures.

Subsequent meeting dates, locations, and times will be published at least 15 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Information on the Panel meetings, agendas, and other information can be obtained at *http://www.gsa.gov/masadvisorypanel* or you may contact Ms. Pat Brooks, Designated Federal Officer, Multiple Award Schedule Advisory Panel, U.S. General Services Administration, 2011 Crystal Drive, Suite 911, Arlington, VA 22205; telephone 703–604–3406, fax 703–605–3454; or via e-mail at *mas.advisorypanel@gsa.gov.*

SUPPLEMENTARY INFORMATION: *Oral comments:* Requests to present oral comments must be in writing (e-mail or fax) and received by Ms. Brooks at the above address seven (7) business days prior to the meeting date. Each individual or group requesting an oral presentation will be limited to a total time of five minutes. Speakers should bring at least 50 copies of their comments for distribution to the reviewers and public at the meeting.

Written Comments: Written comments must be also received seven (7) business days prior to the meeting date so that the comments may be provided to the Panel for their consideration prior to the meeting. Comments should be supplied to Ms. Brooks at the address/contact information noted above in the following format: One hard copy with original signature and one electronic copy via e-mail in Microsoft Word.

Availability of Materials: All meeting materials, including meeting agendas, handouts, public comments, and meeting minutes will be posted on the MAS Panel Web site at *http://www.gsa.gov/masadvisorypanel* or *http://www.gsa.gov/masap.*

Meeting Access: Individuals requiring special accommodations at these meetings should contact Ms. Brooks at

least ten (10) business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 11, 2008.

David A. Drabkin,

Acting Chief Acquisition Officer.

[FR Doc. E8–8252 Filed 4–15–08; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: *"Assessing the Impact of the Patient Safety Improvement Corps (PSIC) Training Program."* In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 16, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Assessing the Impact of the Patient Safety Improvement Corps (PSIC) Training Program

AHRQ proposes to assess the impact of the PSIC training program. This three-week program was designed and implemented by AHRQ and the Veterans' Administration's (VA) National Center for Patient Safety (NCPS) to improve patient safety by training participants in various patient safety concepts, tools, information, and techniques. The PSIC program represents a new approach to training for AHRQ by focusing on disseminating patient safety information and building skill sets to ultimately foster a national network of individuals who support, promote, and speak a common language of patient safety. Participants have included representatives from State health departments, hospitals and health systems, Quality Improvement Organizations, and a very small number of other types of organizations. AHRQ will use an independent contractor to conduct the assessment of the PSIC training program. The goal of the assessment is to determine the extent to which the PSIC concepts, tools, information, and techniques have been used on the job by training participants and successfully disseminated within and beyond the participating organizations, local areas, regions, and States. AHRQ is assessing the PSIC program pursuant to its authority under 42 U.S.C. 299(b) and 42 U.S.C. 299a(a) to evaluate its strategies for improving health care quality.

The assessment involves two Web-based questionnaires to examine post-training activities and patient safety outcomes of the training from multiple perspectives. One questionnaire is directed to training participants while the other is directed to leaders of the organizations from which the training participants were selected. Questionnaires will focus on the following topics: (1) Post-PSIC activities (including how PSIC material has been utilized in their home organizations, types of patient safety activities conducted post-PSIC, and number of people trained in some or all aspects of PSIC since their attendance); (2) barriers to and facilitators of the use of PSIC in the workplace; and (3) perceived outcomes of PSIC participation (e.g., improved patient safety; improved patient safety processes, standards, or policies; improved investigative and analytical processes and selection and implementation of patient safety interventions; improved patient safety culture; improved communications).

Method of Collection

All training participants and organizational leaders from participating organizations will be invited to respond to their corresponding Web-based questionnaire. Invitations will be sent via e-mail, using contact information previously collected by AHRQ and NCPS. Standard non-response follow-up techniques, such as two reminder e-mails that include the link to the questionnaire, will be used. Individuals and organizations will be assured of the privacy of their responses.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the study. Each questionnaire is expected to require about 30 minutes to complete, resulting in a total burden of 188 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in the study. The total cost burden is estimated to be $6,278.60.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Training participant questionnaire	300	1	30/60	150
Organizational leader questionnaire	75	1	30/60	38
Total	375	NA	NA	188

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Training participant questionnaire	300	150	$32.18	$4,827.00

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form name	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Organizational leader questionnaire	75	38	$38.20	$1,451.60
Total	375	188	NA	$6,278.60

*Based upon the mean of the average wages for health professionals for the training participant questionnaire and for executives, administrators, and managers for the organizational leader questionnaire presented in the National Compensation Survey: Occupational Wages in the United States, June 2005, U.S. Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The total cost to the government for this activity is estimated to be $127,442 to conduct the two one-time questionnaires and to analyze and present its results. This amount includes costs for developing the data collection tools ($50,976); collecting the data ($25,488); analyzing the data and reporting the findings ($44,605); and administrative support activities ($6,373).

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 8, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. E8–8060 Filed 4–15–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through April 1, 2010.

For information, contact Larry Pickering, M.D., Executive Secretary, Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E05, Atlanta, Georgia 30333, telephone 404/639–8767 or fax 404/639–8626.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8135 Filed 4–15–08; 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): Improving Postpartum Follow-up in Women with a Gestational Diabetes-Affected Pregnancy, Potential Extramural Project (PEP) 2008–R–02

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.

Time and Date: 1 p.m.–3 p.m., May 28, 2008 (Closed).

Place: Teleconference.

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 "Improving Postpartum Follow-up in Women with a Gestational Diabetes-Affected Pregnancy, PEP 2008–R–02."

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8105 Filed 4–15–08; 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): Developing Measures To Access Compliance with Centers for Disease Control and Prevention (CDC)/Healthcare Infection Control Practices Advisory Committee (HICPAC) Recommendations for the Prevention of Healthcare Associated Methicillin Resistant Staphylococcus Aureus and Related Multidrug Resistant Organisms, Potential Extramural Project (PEP) 2008–R–20

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:

Time and Date: 1 p.m.–2:30 p.m., May 19, 2008 (Closed).

Place: Teleconference.

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 "Developing Measures to Access Compliance with CDC/ HICPAC Recommendations for the Prevention of Healthcare Associated Methicillin Resistant Staphylococcus Aureus and Related Multidrug Resistant Organisms, PEP 2008–R–20."

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8107 Filed 4–15–08; 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): Barriers to Implementing Standing Orders for Adult Immunization in the Office Setting, Potential Extramural Project (PEP) 2008–R–18

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.

Time and Date: 1 p.m.–2 p.m., May 15, 2008 (Closed).

Place: Teleconference.

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 "Barriers to Implementing Standing Orders for Adult Immunization in the Office Setting, PEP 2008–R–18."

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8108 Filed 4–15–08; 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): Expansion of the National Mesothelioma Virtual Registry and Tissue Bank, Request for Application (RFA) OH08–002

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.

Time and Date: 1 p.m.–2 p.m., May 5, 2008 (Closed).

Place: CDC, 2400 Century Center Parkway, 4th Floor, Atlanta, GA 30345.

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 "Expansion of the National Mesothelioma Virtual Registry and Tissue Bank, RFA OH08–002."

For Further Information Contact: Charles N. Rafferty, Ph.D., Assistant Director for Review and Policy, Office of Extramural Programs, CDC, 1600 Clifton Road, NE., Mailstop E74, Atlanta, GA 30333, Telephone (404) 498–2530.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8123 Filed 4–15–08; 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): Feasibility Study of Using Cancer Registries and Other Data Sources To Track Measure of Care In Colorectal and Breast Cancer, Potential Extramural Project (PEP) 2008–R–08

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.

Time and Date: 1 p.m.–3 p.m., May 28, 2008 (Closed).

Place: Teleconference.

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 "Feasibility Study of Using Cancer Registries and other Data Sources to

Track Measure of Care in Colorectal and Breast Cancer, PEP 2008–R–08."

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8126 Filed 4–15–08; 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): Promoting Awareness of Birth Defects Prevention, Potential Extramural Project (PEP) 2008–R–14

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.

Time and Date: 1 p.m.–2:30 p.m., May 21, 2008 (Closed).

Place: Teleconference.

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 "Promoting Awareness of Birth Defects Prevention," PEP 2008–R–14.

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8127 Filed 4–15–08; 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): Evaluating the Risk for Development of Childhood Cancer Among Infants With Birth Defects, Potential Extramural Project (PEP) 2008–R–06

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.

Time and Date: 1 p.m.–2:30 p.m., May 21, 2008 (Closed).

Place: Teleconference.

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 "Evaluating the Risk for Development of Childhood Cancer Among Infants with Birth Defects, PEP 2008–R–06."

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8128 Filed 4–15–08; 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): Validation of a Policy and Environmental Assessment Tool for Child Care Programs, Potential Extramural Project (PEP) 2008–R–05

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.

Time and Date: 1 p.m.–2:30 p.m., May 20, 2008 (Closed).

Place: Teleconference.

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 "Validation of a Policy and Environmental Assessment Tool for Child Care Programs, PEP 2008–R–05."

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8131 Filed 4–15–08; 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): Cardiometabolic Risk Factors Among Women of Reproductive Age, Potential Extramural Project (PEP) 2008–R–07

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:

Time and Date: 1 p.m.–2:30 p.m., May 21, 2008 (Closed).

Place: Teleconference.

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 "Cardiometabolic Risk Factors among Women of Reproductive Age, PEP 2008–R–07."

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8133 Filed 4–15–08; 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): Economic Incentives for Weight Loss in the Work Place—A Pilot Study, Potential Extramural Project (PEP) 2008–R–26

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.

Time and Date: 1 p.m.–2 p.m., May 16, 2008 (Closed).

Place: Teleconference.

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 "Economic Incentives for Weight Loss in the Work Place—A Pilot Study, PEP 2008–R–26."

For Further Information Contact: Linda Shelton, Program Specialist, Coordinating Center for Health and Information Service, Office of the Director, CDC, 1600 Clifton Road, NE., Mailstop E21, Atlanta, GA 30333, Telephone (404) 498–1194.

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: April 9, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–8164 Filed 4–15–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft OIG Supplemental Compliance Program Guidance for Nursing Facilities

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Proposed notice.

SUMMARY: This **Federal Register** proposed notice seeks the comments of interested parties on a draft supplemental compliance program guidance (CPG) for nursing facilities developed by the Office of Inspector General (OIG). When OIG publishes the final version of this guidance, it will supplement OIG's prior CPG for nursing facilities issued in 2000. This proposed notice contains new compliance recommendations and an expanded discussion of risk areas. The proposed notice takes into account Medicare and Medicaid nursing facility payment systems and regulations, evolving industry practices, current enforcement priorities (including the Government's heightened focus on quality of care), and lessons learned in the area of nursing facility compliance. When published, the final supplemental CPG will provide voluntary guidelines to assist nursing facilities in identifying significant risk areas and in evaluating and, as necessary, refining ongoing compliance efforts.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on June 2, 2008.

ADDRESSES: When commenting, please refer to file code OIG–126–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of three ways (no duplicates, please):

1. Electronically. You may submit comments electronically on specific recommendations and suggestions through the Federal eRulemaking Portal at *http://www.regulations.gov.* (Attachments should be in Microsoft Word, if possible.)

2. By regular, express, or overnight mail. You may send written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–126–PN, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By hand or courier. If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 358–3141.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* as soon as possible after they have been received. Comments received timely will also be available for public inspection as they are received at Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (202) 619–0335.

FOR FURTHER INFORMATION CONTACT: Amanda Walker, Associate Counsel, Office of Counsel to the Inspector General, (202) 619–0335; or Catherine Hess, Senior Counsel, Office of Counsel to the Inspector General, (202) 619–1306.

Background

Beginning in 1998, OIG embarked on a major initiative to engage the private health care community in preventing the submission of erroneous claims and in combating fraud and abuse in the Federal health care programs through voluntary compliance efforts. As part of that initiative, OIG has developed a series of CPGs directed at the following segments of the health care industry:

hospitals; clinical laboratories; home health agencies; third-party billing companies; the durable medical equipment, prosthetics, orthotics, and supply industry; hospices; Medicare Advantage (formerly known as Medicare+Choice) organizations; nursing facilities; ambulance suppliers; physicians; and pharmaceutical manufacturers.[1] It is our intent that CPGs encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. The suggestions made in these CPGs are not mandatory, and nursing facilities should not view the CPGs as exhaustive discussions of beneficial compliance practices or relevant risk areas.

OIG originally published a CPG for the nursing facility industry on March 16, 2000.[2] Since that time, there have been significant changes in the way nursing facilities deliver, and are reimbursed for, health care services, as well as significant changes in the Federal enforcement environment and increased concerns about quality of care in nursing facilities. In response to these developments, and in an effort to receive initial input on this guidance from interested parties, OIG published a notice in the **Federal Register** on January 24, 2008 seeking stakeholder comments.[3] We received four comments, primarily from trade associations, generally suggesting that any guidance recognize flexibility and "scalability" concerns due to variations in nursing facility sizes, and encouraging a focus on resident safety and employee screening. Some comments included legislative recommendations, which are beyond the authority of this office.

To ensure full and meaningful input from all interested parties, we are publishing this supplemental CPG in draft form with a 45-day comment period. We are soliciting comments on all aspects of the draft CPG. We are particularly interested in suggestions for section IV, relating to structural elements for nursing facility compliance programs, as well as self-assessment of compliance programs' effectiveness by nursing facilities.[4] Specifically, we are interested in suggestions regarding whether our original recommendations for the basic elements of a compliance program should be updated, and, if so, how?[5] We are also seeking suggestions regarding specific measures of compliance program effectiveness tailored to nursing facilities. For example, we are considering including measures similar to those in the Supplemental Hospital CPG and would like comments on the usefulness of that approach and on the specific effectiveness questions that might be included.

We will review comments received within the above-cited timeframe, incorporate recommendations as appropriate, and prepare a final version of the guidance for publication in the **Federal Register**. The final version of the guidance will also be available on our Web site.

Draft OIG Supplemental Compliance Program Guidance for Nursing Facilities

I. Introduction

Continuing its efforts to promote voluntary compliance programs for the health care industry, the Office of Inspector General (OIG) of the Department of Health and Human Services (Department) publishes this Supplemental Compliance Program Guidance (CPG) for Nursing Facilities.[6] This document supplements, rather than replaces, OIG's 2000 Nursing Facility CPG, which addressed the fundamentals of establishing an effective compliance program for this industry.[7]

Neither this supplemental CPG, nor the original 2000 Nursing Facility CPG, is a model compliance program. Rather, the two documents collectively offer a set of guidelines that nursing facilities should consider when developing and implementing a new compliance program or evaluating an existing one. We are mindful that many nursing facilities have already devoted substantial time and resources to compliance efforts. For those nursing facilities with existing compliance programs, this document may serve as a roadmap for updating or refining their compliance plans. For facilities with emerging compliance programs, this supplemental CPG, read in conjunction with the 2000 Nursing Facility CPG, should facilitate discussions among facility leadership regarding the inclusion of specific compliance components and risk areas.

In drafting this supplemental CPG, we considered, among other things, the public comments; relevant OIG and Centers for Medicare & Medicaid Services (CMS) statutory and regulatory authorities (including CMS's regulations governing long-term care facilities at 42 CFR part 483, CMS transmittals, program memoranda, and other guidance, and the Federal fraud and abuse statutes, together with the anti-kickback safe harbor regulations and preambles); other OIG guidance (such as OIG advisory opinions, special fraud alerts, bulletins, and other public documents); experience gained from investigations conducted by OIG's Office of Investigations, the Department of Justice (DOJ), and the State Medicaid Fraud Control Units; and relevant reports issued by OIG's Office of Audit Services and Office of Evaluation and Inspections. We also consulted with CMS, DOJ, and nursing facility resident advocates.

A. Benefits of a Compliance Program

A successful compliance program addresses the public and private sectors' common goals of reducing fraud and abuse, enhancing health care providers' operations, improving the quality of health care services, and reducing their overall cost. Meeting these goals benefits the nursing facility industry, the government, and residents alike. Compliance programs help nursing facilities fulfill their legal duty to provide quality care; to refrain from submitting false or inaccurate claims or cost information to the Federal health care programs; and to avoid engaging in other illegal practices.

A nursing facility may gain important additional benefits by voluntarily implementing a compliance program, including:

- Demonstrating the nursing facility's commitment to honest and responsible corporate conduct;

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[1] Copies of the CPG's are available on our Web site at *http://www.oig.hhs.gov/fraud/complianceguidance.html*.

[2] *See* 65 FR 14289 (March 16, 2000), "Publication of the OIG Compliance Program Guidance for Nursing Facilities," (2000 Nursing Facility CPG) available on our Web site at *http://oig.hhs.gov/authorities/docs/cpgnf.pdf*.

[3] *See* 73 FR 4248 (January 24, 2008), "Solicitation of Information and Recommendations for Revising the Compliance Program Guidance for Nursing Facilities," available on our Web site at *http://oig.hhs.gov/authorities/docs/08/CPG_Nursing_Facility_Solicitation.pdf*.

[4] *See e.g.*, 70 FR 4858, 4874 (January 31, 2005), "OIG Supplemental Compliance Program Guidance for Hospitals," (Supplemental Hospital CPG) available on our Web site at *http://oig.hhs.gov/fraud/docs/complianceguidance/012705HospSupplementalGuidance.pdf*.

[5] *See* 2000 Nursing Facility CPG, *supra* note 2.

[6] For purposes of convenience in this guidance, the term "nursing facility" or "facility" includes a skilled nursing facility (SNF) and a nursing facility (NF) that meet the requirements of sections 1819 and 1919 of the Social Security Act (Act) (42 U.S.C. 1395i–3, 1396r), respectively, as well as entities that own or operate such facilities. Where appropriate, we distinguish SNFs from NFs. While long-term care providers other than SNFs or NFs, such as assisted living facilities, should find this CPG useful, we recognize that they may be subject to different laws, rules, and regulations and, accordingly, may have different or additional risk areas and may need to adopt different compliance strategies. We encourage all long-term care providers to establish and maintain effective compliance programs.

[7] *See* 2000 Nursing Facility CPG, *supra* note 2.

- Increasing the likelihood of preventing unlawful and unethical behavior, or identifying and correcting such behavior at an early stage;
- Encouraging employees and others to report potential problems, which permits appropriate internal inquiry and corrective action and reduces the risk of False Claims Act lawsuits, and administrative sanctions (*e.g.*, penalties, assessments, and exclusion), as well as State actions;
- Minimizing financial loss to the government and taxpayers, as well as corresponding financial loss to the nursing facility;
- Enhancing resident satisfaction and safety through the delivery of improved quality of care; and
- Improving the nursing facility's reputation for integrity and quality, increasing its market competitiveness and reputation in the community.

OIG recognizes that implementation of a compliance program may not entirely eliminate improper or unethical conduct from nursing facility operations. However, an effective compliance program demonstrates a nursing facility's good faith effort to comply with applicable statutes, regulations, and other Federal health care program requirements, and may significantly reduce the risk of unlawful conduct and corresponding sanctions.

B. Application of Compliance Program Guidance

Given the diversity of the nursing facility industry, there is no single "best" nursing facility compliance program. OIG recognizes the complexities of the nursing facility industry and the differences among facilities. Some nursing facilities are small and may have limited resources to devote to compliance measures; others are affiliated with well-established, large, multi-facility organizations with a widely dispersed work force and significant resources to devote to compliance.

Accordingly, OIG does not intend this supplemental CPG to be a "one-size-fits-all" guidance. OIG strongly encourages nursing facilities to identify and focus their compliance efforts on those areas of potential concern or risk that are most relevant to their organizations. Compliance measures adopted by a nursing facility to address identified risk areas should be tailored to fit the unique environment of the facility (including its structure, operations, resources, the needs of its resident population, and prior enforcement experience). In short, OIG recommends that each nursing facility adapt the objectives and principles underlying this guidance to its own particular circumstances.

In section II below, for contextual purposes, we provide a brief overview of the reimbursement system. In section III, entitled "Fraud and Abuse Risk Areas," we present several fraud and abuse risk areas that are particularly relevant to the nursing facility industry. Each nursing facility should carefully examine these risk areas and identify those that potentially affect it. Next, in section IV, "Other Compliance Considerations," we offer recommendations for establishing an ethical culture and for assessing and improving an existing compliance program. Finally, in section V, "Self-Reporting," we set forth the actions nursing facilities should take if they discover credible evidence of misconduct.

II. Reimbursement Overview

We begin with a brief overview of Medicare and Medicaid reimbursement for nursing facilities as context for the subsequent risk areas section. This overview is intended to be a summary only. It does not establish or interpret any program rules or regulations. Nursing facilities are advised to consult the relevant program's payment, coverage, and participation rules, regulations, and guidance, which change frequently. Any questions regarding payment, coverage, or participation in the Medicare or Medicaid programs should be directed to the relevant contractor, carrier, CMS office, or State Medicaid agency.

A. Medicare

Medicare reimbursement to SNFs and NFs depends on several factors, including the character of the facility, the beneficiary's circumstances, and the type of items and services provided. Generally speaking, SNFs are Medicare-certified facilities that provide extended skilled-nursing or rehabilitative care under Medicare Part A. They are typically reimbursed under Part A for the costs of most items and services, including room, board, and ancillary items and services. In some circumstances (discussed further below), SNFs may receive payment under Medicare Part B. Facilities that are not SNFs are not reimbursed under Part A. They may be reimbursed for some items and services under Part B.

Medicare pays SNFs under a prospective payment system (PPS) for beneficiaries covered by the Part A extended care benefit.[8] Covered beneficiaries are those who require skilled-nursing or rehabilitation services and receive the services from a Medicare certified SNF after a qualifying hospital stay of at least three days.[9] The PPS rate is a fixed, per diem rate.[10] The maximum benefit is 100 days per "spell of illness."[11]

The PPS per diem rate is adjusted per resident to ensure that the level of payment made for a particular resident reflects the resource intensity that would typically be associated with that resident's clinical condition.[12] This methodology, referred to as the Resource Utilization Group (RUG) classification system, currently in version RUG–III, uses beneficiary assessment data extrapolated from the Minimum Data Set (MDS) to assign beneficiaries to one of the RUG–III groups.[13] The MDS is composed of data variables for each resident, including diagnoses, treatments, and an evaluation of the resident's functional status, which are collected via a Resident Assessment Instrument (RAI).[14] Such assessments are conducted at established intervals throughout a resident's stay. The resident's RUG assignment and payment rate are then adjusted accordingly for each interval.[15]

The PPS payments cover virtually all of the SNF's costs for furnishing services to Medicare beneficiaries covered under Part A. Under the "consolidated billing" rules, SNFs bill Medicare for most of the services provided to Medicare beneficiaries in SNF stays covered under Part A, including items and services that outside practitioners and suppliers provide under arrangement with the SNF.[16] The SNF is responsible for paying the outside practitioners and suppliers for these services.[17] Services covered by this consolidated billing

[8] Section 1888(e) of the Act (42 U.S.C. 1395yy(e)) (noting the PPS rate applied to services provided on or after July 1, 1998). *See also* CMS, "Consolidated Billing," available on CMS's Web site at *http://www.cms.hhs.gov/SNFPPS/05_ConsolidatedBilling.asp*.

[9] Sections 1812(a)(2) and 1861(i) of the Act (42 U.S.C. 1395d(a)(2), 1395x(i)).

[10] Section 1888(e) of the Act (42 U.S.C. 1395yy(e)).

[11] Section 1812(a)(2)(A) of the Act (42 U.S.C. 1395d(a)(2)(A)).

[12] Section 1888(e)(4)(G)(i) of the Act (42 U.S.C. 1395yy(e)(4)(G)(i)).

[13] *Id.*

[14] Sections 1819(b)(3) and 1919(b)(3) of the Act (42 U.S.C. 1395i–3(b)(3), 1396r(b)(3)), and their implementing regulation, 42 CFR 483.20, require nursing facilities participating in the Medicare or Medicaid programs to use a standardized RAI to assess each nursing facility resident's strengths and needs.

[15] *See id.*

[16] Sections 1842(b)(6)(E) and 1862(a)(18) of the Act (42 U.S.C. 1395u, 1395aa); Consolidated Billing, *supra* note 8.

[17] *See id.*

requirement include, by way of example, physical therapy, occupational therapy, and speech therapy services; certain non-self-administered drugs and supplies furnished "incident to" a physician's services (*e.g.*, ointments, bandages, and oxygen); braces and orthotics; and the technical component of most diagnostic tests.[18] These items and services must be billed to Medicare by the SNF.[19]

The consolidated billing requirement does not apply to a small number of excluded services, such as physician professional fees and certain ambulance services.[20] These excluded services are separately billable to Part B, by the individual or entity furnishing the service. For example, professional services furnished personally by a physician to a Part A SNF resident are excluded from consolidated billing, and are billed by the physician to the Part B carrier.[21]

Some Medicare beneficiaries reside in a Medicare-certified SNF, but are not eligible for Part A extended care benefits (*e.g.*, a beneficiary who did not have a qualifying hospital stay of at least three days or a beneficiary who has exhausted his or her Part A benefit). These beneficiaries—sometimes described as being in "non-covered Part A stays"—may still be eligible for Part B coverage of certain individual services. Consolidated billing would not apply to such individual services, with the exception of therapy services.[22] Physical therapy, occupational therapy, and speech language pathology services furnished to SNF residents are always subject to consolidated billing.[23] Claims for therapy services furnished during a non-covered Part A stay must be submitted to Medicare by the SNF itself.[24] Thus, according to CMS guidance, the SNF is reimbursed under the Medicare fee schedule for the therapy services, and is responsible for reimbursing the therapy provider.[25]

When a beneficiary resides in a nursing facility (or part thereof) that is not certified as an SNF by Medicare, the beneficiary is not considered an SNF resident for Medicare billing purposes.[26] Accordingly, ancillary services, including therapy services, are not subject to consolidated billing.[27] Either the supplier of the ancillary service or the facility may bill the Medicare carrier for the Part B items and services directly.[28] In these circumstances, it is the joint responsibility of the facility and the supplier to ensure that only one of them bills Medicare.

Part B coverage for durable medical equipment (DME) presents special circumstances because the benefit extends only to items furnished for use in a patient's home.[29] DME furnished for use in an SNF or in certain other facilities providing skilled care is not covered by Part B. Instead, such DME is covered by the Part A PPS payment or applicable inpatient payment.[30] In some cases, NFs that are not SNFs can be considered a "home" for purposes of DME coverage under Part B.[31]

B. Medicaid

Medicaid provides another means for nursing facility residents to pay for skilled-nursing care, as well as room and board in a nursing facility certified by the Government to provide services to Medicaid beneficiaries. Medicaid is a State and Federal program that covers certain groups of low-income and medically-needy people. Medicaid also helps residents dually eligible for Medicare and Medicaid pay their Medicare premiums and cost-sharing amounts. Because Medicaid eligibility criteria, coverage limitations, and reimbursement rates are established at the State level, there is significant variation across the nation. Many States, however, offer a flat daily rate that covers room, board, and routine care for Medicaid beneficiaries.

III. Fraud and Abuse Risk Areas

This section should assist nursing facilities in their efforts to identify areas of their operations that present potential risks of liability under several key Federal fraud and abuse statutes and regulations. This section focuses on areas that are currently of concern to the enforcement community and is not intended to address all potential risk areas for nursing facilities. The identification of a particular practice or activity in this section is not intended to imply that the practice or activity is necessarily illegal in all circumstances or that it may not have a valid or lawful purpose. This section addresses the following areas of significant concern for nursing facilities: quality of care; submission of accurate claims; Federal anti-kickback statute; other risk areas; and Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules.

This guidance does not create any new law or legal obligations, and the discussions in this guidance are not intended to present detailed or comprehensive summaries of lawful or unlawful activity. This guidance is not intended as a substitute for consultation with CMS, a facility's fiscal intermediary or Program Safeguard Contractor, a State Medicaid agency, or other relevant State agencies with respect to the application and interpretation of payment, coverage, licensure, or other provisions that are subject to change. Rather, this guidance should be used as a starting point for a nursing facility's legal review of its particular practices and for development or refinement of policies and procedures to reduce or eliminate potential risk.

A. Quality of Care

By 2030, the number of older Americans is estimated to rise to 71 million,[32] making the aging of the U.S. population "one of the major public health challenges we face in the 21st century."[33] In addressing this challenge, a national focus on the quality of health care is emerging.

In cases that involve failure of care on a systemic and widespread basis, the nursing facility may be liable for submitting false claims for reimbursement to the Government under the Federal False Claims Act, the Civil Monetary Penalties Law (CMPL), or other authorities that address false and fraudulent claims or statements made to the Government.[34] Thus,

[18] Section 1888(e) of the Act (42 U.S.C. 1395yy); Consolidated Billing, *supra* note 8.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] Section 1888(e)(2)(A) of the Act (42 U.S.C. 1395yy(e)(2)(A)); CMS, "MLN Matter SE0518," available on CMS's Web site at *http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0518.pdf.*

[23] *Id.*

[24] MLN Matter SE0518, *supra* note 22.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] Section 1861(n) of the Act (42 U.S.C. 1395x(n)).

[30] Section 1861(h)(5) of the Act (42 U.S.C. 1395x(h)(5)).

[31] Section 1861(n) of the Act (42 U.S.C. 1395x(n)).

[32] Centers for Disease Control and Prevention (CDC), "The State of Aging and Health in America 2007," available on CDC's Web site at *http://www.cdc.gov/aging/pdf/saha_2007.pdf.*

[33] *Id.* (quoting Julie Louise Gerberding, M.D., MPH, Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services).

[34] "Listening Session: Abuse of Our Elders: How We Can Stop It: Hearing Before the Senate Special Committee on Aging," 110th Congress (2007) (testimony of Gregory Demske, Assistant Inspector General for Legal Affairs, Office of Inspector General, U.S. Department of Health and Human Services), available at *http://aging.senate.gov/events/hr178gd.pdf; see also* 18 U.S.C. 287 (concerning false, fictitious or fraudulent claims); 18 U.S.C. 1001 (concerning statements or entries generally); 18 U.S.C. 1035 (concerning false statements relating to health care matters); 18 U.S.C. 1347 (concerning health care fraud); 18 U.S.C. 1516 (concerning obstruction of a Federal audit); the Federal False Claims Act (31 U.S.C. 3729–3733);

Continued

compliance with applicable quality of care standards and regulations is essential for the lawful behavior and success of nursing facilities.

Although many nursing facilities make quality a priority, facilities that fail to do so, and consequently fail to deliver quality health care, risk becoming the target of governmental investigations. Highlighted below are common risk areas associated with the delivery of quality health care to nursing facility residents that frequently arise in enforcement cases.

These include sufficient staffing, comprehensive care plans, appropriate use of psychotropic medications, medication management, and resident safety. This list is not exhaustive. Moreover, nursing facilities should recognize that these issues are often inter-related. Nursing facilities that attempt to address one issue will often find that they must address other areas as well. The risk areas identified in sections III.B. (Submission of Accurate Claims), III.C. (Anti-Kickback), and III.D. (Other Risk Areas) below are also intertwined with quality of care risk areas and should be considered as well.

As a starting point, nursing facilities should familiarize themselves with 42 CFR part 483 (part 483), which sets forth the principal requirements for nursing facility participation in the Medicare and Medicaid programs. It is essential that key members of the organization understand these requirements and support their facility's commitment to compliance with these regulations. Targeted training for care providers, managers, administrative staff, officers, and directors on the requirements of part 483 will enable nursing facilities to ensure that they are fulfilling their obligation to provide quality health care.[35]

1. Sufficient Staffing

OIG is aware of facilities that have systematically failed to provide staff in sufficient numbers and with appropriate clinical expertise to serve their residents. Although most facilities strive to provide sufficient staff, nursing facilities must be mindful that Federal law requires sufficient staffing necessary to attain or maintain the highest practicable physical, mental, and psychosocial well-being of residents.[36] Thus, staffing numbers and staff competency are critical.

The relationship between staff ratios, staff competency, and quality of care is complex.[37] No single staffing model will suit every facility. A staffing model that works in a nursing facility today may not meet the facility's needs in the future. Nursing facilities, therefore, are strongly encouraged to assess their staffing patterns regularly to evaluate whether they have sufficient staff who are competent to care for the unique acuity levels of their residents.

Important considerations for assessing staffing models include, among others, staff skill levels, staff-to-resident ratios, staff turnover,[38] staffing schedules, disciplinary records, payroll records, timesheets, and adverse event reports (*e.g.*, falls or adverse drug events), as well as interviews with staff, residents, and residents' family or legal guardians. Facilities should ensure that the methods used to assess staffing accurately measure actual "on-the-floor" staff rather than theoretical "on-paper" staff. For example, payroll records that reflect actual hours and days worked may be more useful than prospectively generated staff schedules.

2. Comprehensive Resident Care Plans

Development of comprehensive resident care plans is essential to reducing risk. Prior OIG reports revealed that a significant percentage of resident care plans did not reflect residents' actual care needs.[39] Through its enforcement and compliance monitoring activities, OIG continues to see insufficient care plans and their impact on residents as a risk area for nursing facilities.

Medicare and Medicaid regulations require nursing facilities to develop a comprehensive care plan for each resident that addresses the medical, nursing, and mental and psychosocial needs for each resident and includes reasonable objectives and timetables.[40] Nursing facilities should ensure that care planning includes all disciplines involved in the resident's care.[41] Perfunctory meetings or plans developed without the full clinical team may create less than comprehensive resident-centered care plans. Inadequately prepared plans make it less likely that residents will receive coordinated, multidisciplinary care. Insufficient plans jeopardize residents' well-being and risk the provision of inadequate care, medically unnecessary care services, or medically inappropriate services.

To reduce these risks, nursing facilities should design measures to ensure an interdisciplinary and comprehensive approach to developing care plans. Basic steps, such as appropriately scheduling meetings to accommodate the full interdisciplinary team, completing all clinical assessments before the meeting is convened,[42] opening lines of

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section 1128A of the Act (42 U.S.C. 1320a–7a) (concerning civil monetary penalties); section 1128B(c) of the Act (42 U.S.C. 1320a–7b(c)) (concerning false statements or representations with respect to condition or operation of institutions). In addition to the Federal criminal, civil, and administrative liability for false claims and kickback violations outlined in this CPG, nursing facilities also face exposure under State laws, including criminal, civil, and administrative sanctions.

[35] The requirement to deliver quality health care is a continuing obligation for nursing facilities. As regulations change, so too should the training. Therefore, this recommendation envisions more than an initial employee "orientation" training on the nursing facility's obligations to provide quality health care. CMS has multiple resources available to assist nursing facilities in developing training programs. *See* CMS, "Sharing Innovations in Quality, Resources for Long Term Care," available on CMS's Web site at *http://siq.air.org/default.aspx;* CMS, "Skilled Nursing Facilities/Long-Term Care Open Door Forum," available on CMS's Web site at *http://www.cms.hhs.gov/OpenDoorForums/25_ODF_SNFLTC.asp;* CMS, State Operations Manual, available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/IOM/list.asp; see also* Medicare Quality Improvement Community, "Medicare Quality Improvement," available at *http://www.medqic.org.* Nursing facilities may also find it useful to review the CMS Quality Improvement Organizations Statement of Work, available at *http://www.cms.hhs.gov/QualityImprovementOrgs/04_9thsow.asp.*

[36] Sections 1819(b)(4)(A) and 1919(b)(4)(A) of the Act (42 U.S.C. 1395i–3(b)(4)(A), 1396r(b)(4)(A)); 42 CFR 483.30.

[37] For example, State nursing facility staffing standards, which exist for the majority of States, vary in types of regulated staff, the ratios of staff, and the facilities to which the regulations apply. *See* Jane Tilly, *et al.*, "State Experiences with Minimum Nursing Staff Ratios for Nursing Facilities: Findings from Case Studies of Eight States" (November 2003) (joint paper by The Urban Institute and the Department), available at *http://aspe.hhs.gov/daltcp/reports/8statees.htm.*

[38] Nursing facilities operate in an environment of high staff turnover where it is difficult to attract, train, and retain an adequate workforce. Turnover among nurse aides, who provide most of the hands-on care in nursing facilities, means that residents are constantly receiving care from new staff who often lack experience and knowledge of individual residents. Furthermore, research correlates staff shortages and insufficient training with substandard care. *See* OIG, OEI Report OEI–01–04–00070, "Emerging Practices in Nursing Homes," March 2005, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-01-04-00070.pdf* (reviewing emerging practices that nursing facility administrators believe reduce their staff turnover).

[39] *See, e.g.*, OIG, OEI Report OEI–02–99–00040, "Nursing Home Resident Assessment Quality of Care," January 2001, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-02-99-00040.pdf.*

[40] 42 CFR 483.20(k).

[41] 42 CFR 483.20(k)(2)(ii) (requiring an interdisciplinary team, including the physician, a registered nurse with responsibility for the resident, and other disciplines involved in the resident's care).

[42] Nursing facilities with residents with mental illness or mental retardation should ensure that they have the Preadmission Screening and Resident Review (PASRR) screens for their residents. *See* 42 CFR 483.20(m). In addition, for residents who do not require specialized services, facilities should ensure that they are providing the "services of lesser intensity" as set forth in CMS regulations. *See* 42 CFR 483.120(c). Care plan meetings can

communication between direct care providers and interdisciplinary team members, involving the resident and the residents' family members or legal guardian,[43] and documenting the length and content of each meeting, may assist facilities with meeting this requirement.

Another risk area related to care plans includes the involvement of attending physicians in resident care. Although the role and responsibilities of attending physicians are governed by specific regulations,[44] the nursing facility also has a critical role—ensuring that a physician supervises each resident's care.[45] Facilities must also include the attending physician in the development of the resident's care plan.[46] To fulfill these requirements, facilities should develop processes to ensure physician involvement in resident care, including regular resident visits that involve a meaningful evaluation of the resident.[47] In addition, facilities should develop systems to ensure that irregularities noted during drug regimen reviews are reported to attending physicians.[48]

3. Appropriate Use of Psychotropic Medications

Based on our enforcement and compliance monitoring activities, OIG has identified inappropriate use of psychotropic medications for residents as a risk area in at least two ways—the prohibition against inappropriate use of chemical restraints and the requirement to avoid unnecessary drug usage.

Facilities have affirmative obligations to ensure appropriate use of psychotropic medications. Specifically, nursing facilities must ensure that psychopharmacological practices comport with Federal regulations and generally accepted professional standards.[49] The facility is responsible for the quality of drug therapy provided in the facility. Facilities are prohibited from using any medication as a means of chemical restraint for "purposes of discipline or convenience, and not required to treat the resident's medical symptoms."[50] In addition, resident drug regimens must be free from unnecessary drugs.[51] For residents who specifically require antipsychotic medications, CMS regulations also require, unless contraindicated, that residents receive gradual dose reductions and behavioral interventions aimed at reducing medication use.[52]

In light of these requirements, nursing facilities should ensure that there is an adequate indication for the use of the medication and should carefully monitor, document, and review the use of each resident's psychotropic drugs. Compliance measures could include educating care providers regarding appropriate monitoring and documentation practices and auditing drug regimen reviews[53] and resident care plans to determine if they incorporate an assessment of the resident's "medical, nursing, and mental and psychosocial needs,"[54] including the need for psychotropic medications for a specific medical condition.[55] The care providers should analyze the outcomes of the provision of care with the results of the drug regimen reviews, progress notes, and monitoring of the resident's behaviors.

4. Medication Management

The Act requires nursing facilities to provide "pharmaceutical services (including procedures that assure accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident."[56] Nursing facilities should be mindful of potential quality of care problems when adopting and implementing policies and procedures to provide these services. A failure to manage pharmaceutical services properly can seriously jeopardize resident safety, and even result in resident deaths.

Nursing facilities can promote compliance by having in place proper medication management processes—including appropriate training of staff involved in all aspects of pharmaceutical care in the nursing facility—that advance patient safety, minimize adverse drug interactions, and ensure that irregularities in a resident's drug regimen are promptly discovered and addressed. These kinds of policies and procedures may also safeguard against potential tainting of pharmaceutical decisions by improper kickbacks.[57]

CMS regulations require that nursing facilities employ or obtain the services of a licensed pharmacist to "provide consultation on all aspects of the provision of pharmacy services in the facility."[58] The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist, who must report any irregularities discovered in a resident's drug regimen to the attending physician and the director of nursing.[59] Consultant pharmacists are also required to: (1) "[e]stablish a system of records of receipt and disposition of all controlled drugs * * *;" and (2) "[d]etermine that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled."[60]

In many cases, the consultant pharmacists working in nursing facilities are provided by long-term care pharmacies in arrangements to furnish drugs and supplies to the nursing facility, often on an exclusive basis. Long-term care pharmacies have purchasing agreements with pharmaceutical manufacturers and contracts with health plans. As a result of these agreements and contracts, long-term care pharmacies may prefer that nursing facility customers use some drugs over others. A consultant pharmacist provided by a long-term care

provide nursing facilities with an ideal opportunity to ensure that these obligations are met.

[43] Where possible, residents and their family members or legal guardians should be included in the development of care and treatment plans. Unless the resident has been declared incompetent or otherwise found to be incapacitated under State law, the resident has a right to participate in his or her care planning and treatment, as well as in the changes in care or treatment. 42 CFR 483.10(d)(3).

[44] *See, e.g.*, 42 CFR 483.40(b), (c), (e).

[45] 42 CFR 483.40(a).

[46] 42 CFR 483.20(k)(2)(ii).

[47] 42 CFR 483.40 (detailing physician services); 42 CFR 483.20 (detailing facility's role in resident assessments and care plan coordination). Although physicians may delegate some tasks to physician assistants, nurse practitioners, or clinical nurse specialists, as permitted by regulations, facilities must still ensure that physicians supervise the care of residents. 42 CFR 483.40.

[48] *See* 42 CFR 483.60(c).

[49] *See, e.g.*, 42 CFR 483.20(k)(3) (requiring services that are "provided or arranged by the facility" to comport with professional standards of quality); 42 CFR 483.25 (requiring facilities to provide necessary care and services, including the resident's right to be free of unnecessary drugs); 42 CFR 483.75(b) (requiring facilities to provide services in compliance "with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles * * *").

[50] 42 CFR 483.13(a).

[51] 42 CFR 483.25(l)(1). An unnecessary drug includes any medication, including psychotropic medications, that is excessive in dose, used excessively in duration, used without adequate monitoring, used without adequate indications for its use, used in the presence of adverse consequences, or any combination thereof. *Id.*

[52] 42 CFR 483.25(l)(2).

[53] 42 CFR 483.60(c).

[54] 42 CFR 483.20(k).

[55] 42 CFR 483.25(l)(2).

[56] Sections 1819(b)(4)(A)(iii) and 1919(b)(4)(A)(iii) of the Act (42 U.S.C. 1395i–3(b)(4)(A)(iii) and 1396r(b)(4)(A)(iii)). In addition, under 42 CFR 483.60, SNFs and NFs must "provide routine and emergency drugs and biologicals to [their] residents, or obtain them under an agreement described in [section] 483.75(h) * * *." Nursing facilities must meet this obligation even if a pharmacy charges a Medicare Part D copayment to a dual eligible beneficiary who cannot afford to pay the copayment. *See* CMS, Question & Answer ID 7042, available on CMS's Web site at *http://questions.cms.hhs.gov*.

[57] For further discussion of the anti-kickback statute, *see* section III.C. below.

[58] 42 CFR 483.60(b)(1).

[59] 42 CFR 483.60(c).

[60] 42 CFR 483.60(b)(2), (3).

pharmacy may be in a position to influence prescriptions in a manner that benefits the long-term care pharmacy. The consultant pharmacist may face a potential conflict of interest if a drug prescribed for a resident is not one preferred by the long-term care pharmacy.

To minimize these risks and improve compliance with CMS regulations, nursing facilities should commit to robust training and monitoring on a regular basis of all staff involved in prescribing, administering, and managing pharmaceuticals, including all consultant pharmacists. The training should familiarize staff with proper medication management techniques. It should also educate staff on the legal prohibition against accepting anything of value from a pharmacy or pharmaceutical manufacturer to influence the choice of a drug for a resident or to switch a resident from one drug to another. Nursing facilities should implement policies and procedures for maintaining accurate drug records and tracking medications. In addition, nursing facilities should consider monitoring drug records for patterns that may indicate inappropriate drug switching or steering.

Nursing facilities should also review the total compensation paid to consultant pharmacists (whether under contract with a long-term care pharmacy or employed directly by the nursing facility) to ensure that the compensation is not structured in any manner that reflects the volume or value of particular drugs prescribed for, or administered to, patients. Nursing facilities should establish policies that make clear that all prescribing must be based principally on clinical efficacy and appropriateness [61] and that drug switches should not be made by a pharmacist without authorization from the attending physician, medical director, or other licensed prescriber (except for generic substitutions where permitted by State law).

5. Resident Safety

Nursing facility residents have a legal right to be free from abuse and neglect.[62] Facilities should take steps to ensure that they are protecting their residents from these risks.[63] Of particular concern is harm caused by staff and fellow residents.[64]

(a) Promoting Resident Safety

Federal regulations mandate that nursing facilities develop and implement policies and procedures to prohibit mistreatment, neglect, and abuse of residents.[65] Facilities must also thoroughly investigate and report incidents to law enforcement, as required by State laws.[66] Although experts continue to debate the most effective systems for enhancing the reporting, investigation, and prosecution of nursing facility resident abuse, an effective compliance program recognizes the value of a demonstrated internal commitment to eliminating resident abuse.[67] An effective compliance program will include policies, procedures, and practices to prevent, investigate, and respond to instances of potential resident abuse, neglect, or mistreatment, including injuries resulting from staff-on-resident abuse and neglect, resident-on-resident abuse, and abuse from unknown causes.

Confidential reporting is a key component of an effective resident safety program. Such a mechanism enables staff, contractors, residents, family members, visitors, and others to report threats, abuse, mistreatment, and other safety concerns confidentially to senior staff empowered to take immediate action. Posters, brochures, and online resources that encourage readers to report suspected safety problems to senior facility staff are commonly used. Another commonly used compliance component for reporting violations is a dedicated hotline where staff, contractors, residents, family members, visitors, and others with concerns can report suspicions. Regardless of the reporting vehicle, ideally coverage for reporting and addressing resident safety issues would be on a constant basis (*i.e.*, 24 hours per day/7 days per week). Moreover, nursing facilities should make clear to caregivers, facility staff, and residents that the facility is committed to protecting those who make reports from retaliation.

Facilities may also want to consider a program to engage everyone who comes in contact with nursing facility residents—whether health care professionals, administrative, and custodial staff, family and friends, visiting therapists, or community members—in the mission of protecting residents. Such a program could include specialized training for everyone who interacts on a regular basis with residents on recognizing warning signs of neglect or abuse and on effective methods to communicate with potentially fearful residents in a way likely to induce candid self-reporting of neglect or abuse.[68]

(b) Resident Interactions

The nursing facility industry, resident advocacy groups, and law enforcement are becoming increasingly concerned about resident abuse committed by fellow residents. Abuse can occur as a result of the failure to properly screen and assess, or the failure of staff to monitor, residents at risk for aggressive behavior. Such failures can jeopardize both the resident with aggressive behaviors and the resident who may be victimized.

Heightened awareness and monitoring for abuse are crucial to eradicating resident-on-resident abuse. Nursing facilities can advance their mission to provide a safe environment for residents through targeted education relating to resident-on-resident abuse (particularly for staff with responsibilities for admission evaluations). Thorough resident assessments, comprehensive care plans, periodic resident assessments, and proper staffing assignments, would also assist nursing

[61] The determination of clinical efficacy and appropriateness of the particular drugs should precede, and be paramount to, the consideration of costs.

[62] Sections 1819 and 1919 of the Act (42 U.S.C. 1351i-3 and 1396r); 42 CFR 483.10; *see also* 42 CFR 483.15 and 483.25.

[63] *See id.*

[64] For an overview of research relating to resident abuse and neglect, *see* Catherine Hawes, Ph.D., "Elder Abuse in Residential Long-Term Care Settings: What is Known and What Information is Needed?," in Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America (National Research Council, 2003); U.S. Government Accountability Office (GAO), GAO Report GAO–02–312, "Nursing Homes: More Can Be Done to Protect Residents from Abuse," March 2002, available on GAO's Web site at *http://www.gao.gov/new.items/d02312.pdf*; Administration on Aging, Elder Abuse Web site, available at *http://www.aoa.gov/eldfam/Elder_Rights/Elder_Abuse/Elder_Abuse.asp.*

[65] 42 CFR 483.13(c); *see also* 42 CFR 483.13(a).

[66] *Id.*

[67] Under State mandatory reporting statutes, persons such as health care professionals, human service professionals, clergy, law enforcement, and financial professionals may have a legal obligation to make a formal report to law enforcement officials or a central reporting agency if they suspect that a nursing facility resident is being abused or neglected. To ensure compliance with these statutes, nursing facilities should consider training relating to compliance with their relevant States' laws. Nursing facilities can also assist by providing ready access to law enforcement contact information.

[68] Facilities could explore partnering with the ombudsmen and other consumer advocates in sponsoring or participating in special training programs designed to prevent abuse. *See* "Elder Justice: Protecting Seniors from Abuse and Neglect: Hearing Before the Senate Committee on Finance," 107th Congress (2002) (testimony of Catherine Hawes, Ph.D., titled "Elder Abuse in Residential Long-Term Care Facilities: What is Known About the Prevalence, Causes, and Prevention"), available at *http://finance.senate.gov/hearings/testimony/061802chtest.pdf.*

facilities in their mission to provide a safe environment for residents.

(c) Staff Screening

Nursing facilities cannot employ individuals "[f]ound guilty of abusing, neglecting, or mistreating residents," or individuals with "a finding entered into [a] State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property."[69] Effective recruitment, screening, and training of care providers are essential to ensure a viable workforce. Although no pre-employment background screening can provide nursing facilities with absolute assurances that a job applicant will not commit a crime in the future, nursing facilities must make reasonable efforts to ensure that they have a workforce that will maintain the safety of their residents.

Commonly, nursing facilities screen potential employees against criminal record databases. OIG is aware that there is a "great diversity in the way States systematically identify, report, and investigate suspected abuse."[70] Nonetheless, a comprehensive examination of a prospective employee's criminal record in all States in which the person has worked or resided may provide a greater degree of protection for residents.[71]

Verification of education, licensing, certifications, and training for care providers can also assist nursing facilities in their efforts to ensure patients are provided with qualified and skilled caregivers. Many States have requirements that nursing facilities conduct these checks for all professional care providers, such as therapists, medical directors, and nurses. Federal regulations require a nursing facility to check its State nurse aide registry to ensure that potential hires for nurse aide positions have met competency evaluation requirements or are otherwise excepted from registration requirements.[72] In addition, the facility must also check every State nurse aide registry it "believes will include information" on the individual.[73] To ensure compliance with this requirement, facilities should have mechanisms in place to identify which State registries they must examine.

B. Submission of Accurate Claims

Nursing facilities must submit accurate claims to Federal health care programs. Examples of false or fraudulent claims include claims for items not provided or not provided as claimed, claims for services that are not medically necessary, and claims when there has been a failure of care. Submitting false claims, or causing false claims to be submitted, to Medicare or Medicaid may subject the individual, the entity, or both to criminal prosecution, civil penalties including treble damages, and exclusion from participation in Federal health care programs.

Common and longstanding risks associated with claims preparation and submission include duplicate billing, insufficient documentation, and false or fraudulent cost reports. While nursing facilities should continue to be vigilant with respect to these important risk areas, we believe these risk areas are relatively well-understood in the industry, and therefore they are not specifically addressed in this section.

As reimbursement systems have evolved, OIG has uncovered other types of fraudulent transactions related to the provision of health care services to residents of nursing facilities reimbursed by Medicare and Medicaid. In this section, we will discuss some of these risk areas. This list is not exhaustive. It is intended to assist facilities in evaluating their own risk areas. In addition, section III.A. above outlines other regulatory requirements that, if not met, may subject nursing facilities to potential liability for submission of false or fraudulent claims.

1. Proper Reporting of Resident Case-Mix by SNFs

We are aware of instances in which SNFs have improperly upcoded resident RUG assignments.[74] The method of classifying a resident into the correct RUG, through resident assessments, requires accurate and comprehensive reporting about a resident's conditions and needs. Inaccurate reporting of data could result in the misrepresentation of the resident's status, the submission of false claims, and potential enforcement actions. Therefore, we have identified the assessment, reporting, and evaluation of resident case-mix data as a significant risk area for SNFs.[75]

Because of the critical role resident case-mix data plays in resident care planning and reimbursement, training on the collection and use of case-mix data is important. An effective compliance program will include training of responsible staff to ensure that persons collecting the data and those charged with analyzing and responding to the data are knowledgeable about the purpose and utility of the data. Facilities must also ensure that data reported to the Federal Government is accurate. Both internal and external periodic validation of data may prove useful. Moreover, as authorities continue to scrutinize quality-reporting data,[76] nursing facilities are well-advised to review such data regularly to ensure its accuracy and to identify and address potential quality of care issues.[77]

2. Therapy Services

The provision of physical, occupational, and speech therapy services continues to be a risk area for nursing facilities. Potential problems include: (i) Improper utilization of therapy services to inflate the severity of RUG classifications and obtain additional reimbursement; (ii) overutilization of therapy services billed on a fee-for-service basis to Part B under consolidated billing; and (iii) stinting on therapy services provided to patients covered by the Part A PPS payment.[78] These practices may result in the submission of false claims.[79]

In addition, unnecessary therapy services may place frail but otherwise functioning residents at risk for physical injury, such as muscle fatigue and broken bones, and may obscure a resident's true condition, leading to inadequate plans of care and inaccurate RUG classifications.[80] Too few therapy

[69] 42 CFR 483.13(c)(1)(ii).

[70] OIG, Audit Report A–12–12–97–0003, "Safeguarding Long-Term Care Residents," September 1998, available on our Web site at *http://oig.hhs.gov/oas/reports/ooa/d9700003.pdf*.

[71] Because there is no one central repository for criminal records, there is a significant limitation to searching the criminal record databases only for the State in which the facility is located. A better practice may be to search databases for all States in which the applicant resided or was employed.

[72] 42 CFR 483.75(e)(5).

[73] 42 CFR 483.75(e)(6).

[74] A 2006 OIG report found that 22 percent of claims were upcoded, representing $542 million in potential overpayments for FY 2002. OIG, OEI Report OEI–02–02–00830, "A Review of Nursing Facility Resource Utilization Groups," February 2006, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-02-02-00830.pdf*.

[75] To the extent a State Medicaid program relies upon RUG classification, or a variation of this system, to calculate its reimbursement rate, nursing facilities, as defined in section 1919 of the Act (42 U.S.C. 1396r), should be aware of this risk area as well.

[76] *See, e.g.*, CMS, "2007 Action Plan for (Further Improvement of) Nursing Home Quality," September 2006, available on CMS's Web site at *http://www.cms.hhs.gov/SurveyCertificotionGenInfo/downloads/2007ActionPlan.pdf*.

[77] In addition to assisting facilities with ensuring that claims data is accurate, monitoring MDS data may assist facilities in recognizing common warning signs of a systemic care problem (*e.g.*, increase in or excessive pressure ulcers or falls).

[78] There may be additional risk areas for outside therapy suppliers.

[79] Additional risks related to the anti-kickback statute are discussed below in section III.C.

[80] *See* 42 CFR 483.20(b) and (k).

services may expose residents to risk of physical injury or decline in condition, resulting in potential failure of care problems.

OIG strongly advises nursing facilities to develop policies, procedures, and measures to ensure that residents are receiving medically appropriate therapy services.[81] Some practices that may be beneficial include: requirements that therapy contractors provide complete and contemporaneous documentation of each resident's services; regular and periodic reconciliation of the physician's orders and the services actually provided; interviews with the residents and family members to be sure services are delivered; and assessments of the continued medical necessity for services during resident care meetings at which the attending physician attends.

3. Screening for Excluded Individuals and Entities

No Federal health care program payment may be made for items or services furnished by an excluded individual or entity.[82] This payment ban applies to all methods of Federal health care program reimbursement. Civil monetary penalties (CMPs) may be imposed against any person who arranges or contracts (by employment or otherwise) with an individual or entity for the provision of items or services for which payment may be made under a Federal health care program,[83] if the person knows or should know that the employee or contractor is excluded from participation in a Federal health care program.[84]

To prevent hiring or contracting with an excluded person, OIG strongly advises nursing facilities to screen all prospective owners, officers, directors, employees, contractors,[85] and agents prior to engaging their services against OIG's List of Excluded Individuals/Entities (LEIE) on OIG's Web site,[86] as well as the U.S. General Services Administration's Excluded Parties List System.[87] In addition, facilities should consider implementing a process that requires job applicants to disclose, during the pre-employment process (or vendors during the request for proposal process), whether they are excluded. Facilities should strongly consider periodically screening their current owners, officers, directors, employees, contractors, and agents to ensure that they have not been excluded since the initial screening.

Providers should also take steps to ensure that they have policies and procedures that require removal of any owner, officer, director, employee, contractor, or agent from responsibility for, or involvement with, a provider's business operations related to the Federal health care programs if the provider has actual notice that such a person is excluded. Providers may also wish to consider appropriate training for human resources personnel on the effects of exclusion. Exclusion continues to apply to an individual even if he or she changes from one health care profession to another while excluded. That exclusion remains in effect until OIG has reinstated the individual, which is not automatic.[88] A useful tool for the training is OIG's Special Advisory Bulletin, titled "The Effect of Exclusion from Participation in Federal Health Care Programs."[89]

4. Restorative and Personal Care Services

Facilities must ensure that residents receive appropriate restorative and personal care services to allow residents to attain and maintain their highest practicable level of functioning.[90] These services include, among others, care to avoid pressure ulcers, active and passive range of motion, ambulation, fall prevention, incontinence management, bathing, dressing, and grooming activities.[91]

OIG is aware of facilities that have received payment from Federal health care programs for restorative and personal care services despite the fact that the services were not provided or were so wholly deficient that they amounted to no care at all. Federal health care programs do not reimburse for restorative and personal care services under these circumstances. Nursing facilities that fail to provide necessary restorative and personal care services risk billing for services not rendered as claimed, and therefore may be subject to liability under fraud and abuse statutes and regulations.

To avoid this risk, nursing facilities are strongly encouraged to have comprehensive procedures in place to ensure that services are of an appropriate quality and level and that services are in fact delivered to nursing facility residents. To accomplish this, facilities may wish to engage in resident and staff interviews, medical record reviews,[92] and personal observations of care delivery. Moreover, complete and contemporaneous documentation of services is critical to ensuring that services are rendered.

C. The Federal Anti-Kickback Statute

The Federal anti-kickback statute, section 1128B(b) of the Act, [93] places constraints on business arrangements related directly or indirectly to items or services reimbursable by Federal health care programs, including, but not limited to, Medicare and Medicaid. The anti-kickback statute prohibits the health care industry from engaging in some practices that are common in other business sectors, such as offering or receiving gifts to reward past or potential new referrals.

The anti-kickback statute is a criminal prohibition against remuneration (in any form, whether direct or indirect) made purposefully to induce or reward the referral or generation of Federal health care program business. The anti-

[81] *See* OIG, OEI Report OEI–09–99–00563, "Physical, Occupational, and Speech Therapy for Medicare Nursing Home Patients: Medical Necessity and Quality of Care Based on Treatment Diagnosis," August 2001, available on our Web site at *http://oig.hhs.gov/oei/reports/oei-09-99-00563.pdf*.

[82] 42 CFR 1001.1901. Exclusions imposed prior to August 5, 1997, cover Medicare and all State health care programs (including Medicaid), but not other Federal health care programs. *See* The Balanced Budget Act of 1997 (Pub. L. 105–33) (amending section 1128 of the Act (42 U.S.C. 1320a–7) to expand the scope of exclusions imposed by OIG).

[83] Such items or services could include administrative, clerical, and other activities that do not directly involve patient care. *See* section 1128A(a)(6) of the Act (42 U.S.C. 1320a–7a(a)(6)).

[84] *Id.*

[85] A nursing facility that relies upon third-party agencies to provide temporary or contract staffing should consider including provisions in its contracts that require the vendors to screen staff against OIG's List of Excluded Individuals/Entities before determining that they are eligible to work at the nursing facility. Although a nursing facility would not avoid liability for violating Medicare's prohibition on payment for services rendered by the excluded staff person merely by including such a provision, requiring the vendors to screen staff may help a nursing facility avoid engaging the services of excluded persons, and could be taken into account in the event of a Government enforcement action.

[86] Available on our Web site at *http://oig.hhs.gov/fraud/exclusions/listofexcluded.html*.

[87] Available at *http://www.epls.gov/*.

[88] Reinstatement of excluded entities and individuals is not automatic. Those wishing to again participate in the Medicare, Medicaid and all Federal health care programs must apply for reinstatement and receive authorized notice from OIG that reinstatement has been granted. Obtaining a provider number from a Medicare contractor, a State agency or a Federal health care program does not reinstate eligibility to participate in those programs. There are no provisions for retroactive reinstatement. *See* 42 CFR 1001.1901.

[89] OIG, "The Effect of Exclusion From Participation in Federal Health Care Programs," September 1999, available on our Web site at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/effected.htm*.

[90] 42 CFR 483.25 (requiring facilities to provide care and services necessary to ensure a resident's ability to participate in activities of daily living do not diminish unless a clinical condition makes the decline unavoidable).

[91] *Id.*

[92] Indicators to watch for include, but are not limited to, bedsores, falls, unexplained weight loss, and dehydration.

[93] 42 U.S.C. 1320a–7b.

kickback statute prohibits offering or paying anything of value for patient referrals. It also prohibits offering or paying of anything of value in return for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or order of any item or service reimbursable in whole or in part by a Federal health care program. The statute also covers the solicitation or acceptance of remuneration for referrals for, or the generation of, business payable by a Federal health care program. Liability under the anti-kickback statute is determined separately for each party involved. In addition to criminal penalties, violators may be subject to CMPs and exclusion from the Federal health care programs. Nursing facilities should also be aware that compliance with the anti-kickback statute is a condition of payment under Medicare and other Federal health care programs.[94] As such, liability may arise under the False Claims Act if the anti-kickback statute violation results in the submission of a claim for payment under a Federal health care program.

Nursing facilities make and receive referrals of Federal health care program business. Nursing facilities need to ensure that these referrals comply with the anti-kickback statute. Nursing facilities may obtain referrals of Federal health care program beneficiaries from a variety of health care sources, including, for example, physicians and other health care professionals, hospitals and hospital discharge planners, hospices, home health agencies, and other nursing facilities. Physicians, pharmacists, and other health care professionals may generate referrals for items and services reimbursed to the nursing facilities by Federal health care programs. In addition, when furnishing services to residents, nursing facilities often direct or influence referrals to others for items and services reimbursable by Federal health care programs. For example, nursing facilities may refer patients to, or order items or services from, hospices, DME companies, laboratories, diagnostic testing facilities, long-term care pharmacies, hospitals, physicians, other nursing facilities, and physical, occupational and speech therapists. All of these circumstances call for vigilance under the anti-kickback statute.

Although liability under the anti-kickback statute ultimately turns on a party's intent, it is possible to identify arrangements or practices that may present a significant potential for abuse. For purposes of identifying potential kickback risks under the anti-kickback statute, the following inquiries are useful:

- Does the nursing facility (or its affiliates or representatives) provide anything of value to persons or entities in a position to influence or generate Federal health care program business for the nursing facility (or its affiliates) directly or indirectly?
- Does the nursing facility (or its affiliates or representatives) receive anything of value from persons or entities for which the nursing facility generates Federal health care program business, directly or indirectly?
- Could one purpose of an arrangement be to induce or reward the generation of business payable in whole or in part by a Federal health care program? Importantly, under the anti-kickback statute, neither a legitimate business purpose for an arrangement nor a fair-market value payment will legitimize a payment if there is also an illegal purpose (*i.e.*, inducing Federal health care program business).

Any arrangement for which the answer to any of these inquiries is affirmative implicates the anti-kickback statute and requires careful scrutiny.

Several potentially aggravating considerations are useful in identifying arrangements at greatest risk of prosecution. In particular, in assessing risk, nursing facilities should ask the following questions, among others, about any potentially problematic arrangements or practices they identify:

- Does the arrangement or practice have a potential to interfere with, or skew, clinical decision-making?
- Does the arrangement or practice have a potential to increase costs to Federal health care programs or beneficiaries?
- Does the arrangement or practice have a potential to increase the risk of overutilization or inappropriate utilization?
- Does the arrangement or practice raise patient safety or quality of care concerns?

Nursing facilities should be mindful of these concerns when structuring and reviewing arrangements. An affirmative answer to one or more of these questions is a red flag signaling an arrangement or practice that may be particularly susceptible to fraud and abuse.

Nursing facilities that have identified potentially problematic arrangements or practices can take a number of steps to reduce or eliminate the risk of an anti-kickback violation. Most importantly, the anti-kickback statute and the corresponding regulations establish a number of "safe harbors" for common business arrangements. The safe harbors protect arrangements from liability under the statute. The following safe harbors are of most relevance to nursing facilities:

- Investment interests safe harbor (42 CFR 1001.952(a));
- Space rental safe harbor (42 CFR 1001.952(b));
- Equipment rental safe harbor (42 CFR 1001.952(c));
- Personal services and management contracts safe harbor (42 CFR 1001.952(d));
- Discount safe harbor (42 CFR 1001.952(h));
- Employee safe harbor (42 CFR 1001.952(i));
- Electronic health records items and services (42 CFR 1001.952(y)); and
- Managed care and risk sharing arrangements (42 CFR 1001.952(m), (t). and (u)).

An arrangement must fit squarely in a safe harbor to be protected. Safe harbor protection requires strict compliance with all applicable conditions set out in the relevant regulation.[95] Compliance with a safe harbor is voluntary. Failure to comply with a safe harbor does not mean an arrangement is illegal per se. Nevertheless, we recommend that nursing facilities structure arrangements to fit in a safe harbor whenever possible.

Nursing facilities should evaluate potentially problematic arrangements with referral sources and referral recipients that do not fit into a safe harbor by reviewing the totality of the facts and circumstances, including the intent of the parties. Depending on the circumstances, some relevant factors include:

- *Nature of the relationship between the parties.* What degree of influence do the parties have, directly or indirectly, on the generation of business for each other?
- *Manner in which participants selected.* Were parties selected to participate in an arrangement in whole or in part because of their past or anticipated referrals?
- *Manner in which the remuneration is determined.* Does the remuneration take into account, directly or indirectly,

[94] *See, e.g.*, CMS, Form 855A, "Medicare Federal Health Care Provider/Supplier Application," Certification Statement at section 15, paragraph A.3, available on CMS's Web site at *http://www.cms.hhs.gov/CMSForms/downloads/CMS855a.pdf.*

[95] Parties to an arrangement cannot obtain safe harbor protection by entering into a sham contract that complies with the written agreement requirement of a safe harbor and appears, on paper, to meet all of the other safe harbor requirements, but does not reflect the actual arrangement between the parties. In other words, in assessing compliance with a safe harbor, the question is not whether the terms in a written contract satisfy all of the safe harbor requirements, but whether the actual arrangement satisfies the requirements.

the volume or value of business generated? Is the remuneration conditioned in whole or in part on referrals or other business generated between the parties? Is the arrangement itself conditioned, directly or indirectly, on the volume or value of Federal health care program business? Is there any service provided other than referrals?

• *Value of the remuneration.* Is the remuneration fair-market value in an arm's-length transaction for legitimate, reasonable, and necessary services that are actually rendered? Is the nursing facility paying an inflated rate to a potential referral source? Is the nursing facility receiving free or below-market-rate items or services from a provider or supplier? Is compensation tied, directly or indirectly, to Federal health care program reimbursement? Is the determination of fair-market value based upon a reasonable methodology that is uniformly applied and properly documented?

• *Nature of items or services provided.* Are items and services actually needed and rendered, commercially reasonable, and necessary to achieve a legitimate business purpose?

• *Potential Federal program impact.* Does the remuneration have the potential to affect costs to any of the Federal health care programs or their beneficiaries? Could the remuneration lead to overutilization or inappropriate utilization?

• *Potential conflicts of interest.* Would acceptance of the remuneration diminish, or appear to diminish, the objectivity of professional judgment? Are there patient safety or quality-of-care concerns? If the remuneration relates to the dissemination of information, is the information complete, accurate, and not misleading?

• *Manner in which the arrangement is documented.* Is the arrangement properly and fully documented in writing? Are the nursing facilities and outside providers and suppliers documenting the items and services they provide? Is the nursing facility monitoring items and services provided by outside providers and suppliers? Are arrangements actually conducted according to the terms of the written agreements? It is the substance, not the written form, of an arrangement that is determinative.

These inquiries—and appropriate follow-up inquiries—can help nursing facilities identify, address, and avoid problematic arrangements.

Available OIG guidance on the anti-kickback statute includes OIG Special Fraud Alerts and advisory bulletins. OIG also issues advisory opinions to specific parties about their particular business arrangements.[96] A nursing facility concerned about an existing or proposed arrangement may request a binding OIG advisory opinion regarding whether the arrangement violates the Federal anti-kickback statute or other OIG fraud and abuse authorities. Procedures for requesting an advisory opinion are set out at 42 CFR part 1008. The safe harbor regulations (and accompanying **Federal Register** preambles), fraud alerts and bulletins, advisory opinions (and instructions for obtaining them, including a list of frequently asked questions), and other guidance are available on our Web site at *http://oig.hhs.gov*.

The following discussion highlights several known areas of potential risk under the anti-kickback statute. The propriety of any particular arrangement can only be determined after a detailed examination of the attendant facts and circumstances. The identification of a given practice or activity as "suspect" or as an area of risk does not mean it is necessarily illegal or unlawful, or that it cannot be properly structured to fit in a safe harbor. It also does not mean that the practice or activity is not beneficial from a clinical, cost, or other perspective. Instead, the areas identified below are practices that have a potential for abuse and that should receive close scrutiny from nursing facilities.

1. Free Goods and Services

OIG has a longstanding concern about the provision of free goods or services to an existing or potential referral source. There is a substantial risk that free goods or services may be used as a vehicle to disguise or confer an unlawful payment for referrals of Federal health care program business. For example, OIG gave the following warning about free computers in the preamble to the 1991 safe harbor regulations:

> A related issue is the practice of giving away free computers. In some cases the computer can only be used as part of a particular service that is being provided, for example, printing out the results of laboratory tests. In this situation, it appears that the computer has no independent value apart from the service being provided and that the purpose of the free computer is not to induce an act that is prohibited by the statute * * * In contrast, sometimes the computer that is given away is a regular personal computer, which the physician is free to use for a variety of purposes in addition to receiving test results. In that situation the computer has a definite value to the physician, and, depending on the circumstances, may well constitute an illegal inducement.[97]

Similarly, with respect to free services, OIG observed in a Special Fraud Alert that:

> While the mere placement of a laboratory employee in the physician's office would not necessarily serve as an inducement prohibited by the anti-kickback statute, the statute is implicated when the phlebotomist performs additional tasks that are normally the responsibility of the physician's office staff. These tasks can include taking vital signs or other nursing functions, testing for the physician's office laboratory, or performing clerical services. Where the phlebotomist performs clerical or medical functions not directly related to the collection or processing of laboratory specimens, a strong inference arises that he or she is providing a benefit in return for the physician's referrals to the laboratory. In such a case, the physician, the phlebotomist, and the laboratory may have exposure under the anti-kickback statute. This analysis applies equally to the placement of phlebotomists in other health care settings, including nursing homes, clinics and hospitals.[98]

The principles illustrated by each of the above examples also apply in the nursing facility context. The provision of goods or services that have independent value to the recipient or that the recipient would otherwise have to provide at its own expense confers a benefit on the recipient. This benefit may constitute prohibited remuneration under the anti-kickback statute, if one purpose of the remuneration is to generate referrals of Federal health care program business.

Examples of suspect free goods and services arrangements that warrant careful scrutiny include:

• Pharmaceutical consultant services, medication management, or supplies offered by a pharmacy;

• Infection control, chart review, or other services offered by laboratories or other suppliers;

• Equipment, computers, or software applications[99] that have independent value to the nursing facility;

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[96] While informative for guidance purposes, an OIG advisory opinion is binding only with respect to the particular party or parties that requested the opinion. The analyses and conclusions set forth in OIG advisory opinions are fact-specific. Accordingly, different facts may lead to different results.

[97] 56 FR 35952 and 35978 (July 29, 1991), "Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions," available on our Web site at *http://oig.hhs.gov/fraud/docs/safeharborregulations/072991.htm*.

[98] 59 FR 65372, 65377 (December 19, 1994), "Publication of OIG Special Fraud Alerts," available on our Web site at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/121994.html*.

[99] There is a safe harbor for electronic health records software arrangements at 42 CFR 1001.952(y), which can be used by nursing facilities. The safe harbor is available if all of its conditions are satisfied. The safe harbor does not protect free hardware or equipment.

- DME or supplies offered by DME suppliers for patients covered by the SNF Part A benefit;
- A laboratory phlebotomist providing administrative services;
- A hospice nurse providing nursing services for non-hospice patients; and
- A registered nurse provided by a hospital.

Nursing facilities should be mindful that, depending on the circumstances, these and similar arrangements may subject the parties to liability under the anti-kickback statute, if the requisite intent is present.

2. Services Contracts

(a) Non-Physician Services

Often kickbacks are disguised as otherwise legitimate payments or are hidden in business arrangements that appear, on their face, to be appropriate. In addition to the provision of free goods and services, the provision or receipt of goods or services at non-fair-market value rates presents a heightened risk of fraud and abuse. Nursing facilities often arrange for certain services and supplies to be provided to residents by outside suppliers and providers, such as pharmacies, clinical laboratories, DME suppliers, ambulance providers, parenteral and enteral nutrition (PEN) suppliers, diagnostic testing facilities, rehabilitation companies, and physical, occupational, and speech therapists. These relationships need to be closely scrutinized under the anti-kickback statute to ensure that they are not vehicles to disguise kickbacks from the suppliers and providers to the nursing facility to influence the nursing facility to refer Federal health care program business to the suppliers and providers.

To minimize their risk, nursing facilities should periodically review contractor and staff arrangements to ensure that: (i) There is a legitimate need for the services or supplies; (ii) the services or supplies are actually provided and adequately documented; (iii) the compensation is at fair-market value in an arm's-length transaction; and (iv) the arrangement is not related in any manner to the volume or value of Federal health care program business. Nursing facilities are well-advised to have all of the preceding facts documented contemporaneously and prior to payment to the provider of the supplies or services. To eliminate their risk, nursing facilities should structure services arrangements to comply with the personal services and management contracts safe harbor [100] whenever possible.

(b) Physician Services

Nursing facilities also arrange for physicians to provide medical director, quality assurance, and other services. Such physician oversight and involvement at the nursing facility contributes to the quality of care furnished to the residents. These physicians, however, may also be in a position to generate Federal health care program business for the nursing facility. For instance, these physicians may refer patients for admission. They may order items and services that result in an increased RUG or that are billable separately by the nursing facility. Physician arrangements need to be closely monitored to ensure that they are not vehicles to pay physicians for referrals. As with other services contracts, nursing facilities should periodically review these arrangements to ensure that: (i) There is a legitimate need for the services; (ii) the services are provided; (iii) the compensation is at fair-market value in an arm's-length transaction; and (iv) the arrangement is not related in any manner to the volume or value of Federal health care program business. In addition, prudent nursing facilities will maintain contemporaneous documentation of the arrangement, including, for example, the compensation terms, time logs or other accounts of services rendered, and the basis for determining compensation. Prudent facilities will also take steps to ensure that they have not engaged more medical directors or other physicians than necessary for legitimate business purposes. They will also ensure that compensation is commensurate with the skill level and experience reasonably necessary to perform the contracted services. To eliminate their risk, nursing facilities should structure services arrangements to comply with the personal services and management contracts safe harbor [101] whenever possible.

3. Discounts

(a) Price Reductions

Public policy favors open and legitimate price competition in health care. Thus, the anti-kickback statute contains an exception for discounts offered to customers that submit claims to the Federal health care programs, if the discounts are properly disclosed and accurately reported. However, to qualify for the exception, the discount must be in the form of a reduction in the price of the good or service based on an arm's-length transaction. In other words, the exception covers only reductions in the product's or service's price.

In conducting business, nursing facilities routinely purchase items and services reimbursable by Federal health care programs. Therefore, they should familiarize themselves with the discount safe harbor at 42 CFR 1001.952(h). In particular, nursing facilities should insure that all discounts—including any rebates—are properly disclosed and accurately reflected on their cost reports (and in any claims as appropriate) filed with a Federal program. In addition, some nursing facilities purchase products through group purchasing organizations (GPOs) to which they belong. Any discounts received from vendors who sell their products under a GPO contract should be properly disclosed and accurately reported on the nursing facility's cost reports. Although there is a safe harbor for administrative fees paid by a vendor to a GPO,[102] that safe harbor does not protect discounts provided by a vendor to purchasers of products.

(b) Swapping

Nursing facilities often obtain discounts from suppliers and providers on items and services that the nursing facilities purchase for their own account. In negotiating arrangements with suppliers and providers, a nursing facility should be careful that there is no link or connection, explicit or implicit, between discounts offered or solicited for business that the nursing facility pays for and the nursing facility's referral of business billable by the supplier or provider directly to Medicare or another Federal health care program. For example, nursing facilities should not engage in "swapping" arrangements by accepting a low price from a supplier or provider on an item or service covered by the nursing facility's Part A per diem payment in exchange for the nursing facility referring to the supplier or provider other Federal health care program business, such as Part B business excluded from consolidated billing, that the supplier or provider can bill directly to a Federal health care program. Such "swapping" arrangements implicate the anti-kickback statute and are not protected by the discount safe harbor. Nursing facility arrangements with clinical laboratories, DME suppliers, and ambulance providers are some examples of arrangements that may be prone to "swapping" problems.

[100] 42 CFR 1001.952(b)

[101] 42 CFR 1001.952(d).

[102] 42 CFR 1001.952(d).

As we have previously explained in other guidance,[103] the size of a discount is not determinative of an anti-kickback statute violation. Rather, the appropriate question to ask is whether the discount is tied or linked, directly or indirectly, to referrals of other Federal health care program business. When evaluating whether an improper connection exists between a discount offered to a nursing facility and referrals of Federal health care program business billed by a supplier or provider, suspect arrangements include below-cost arrangements or arrangements at prices lower than the prices offered by the supplier or provider to other customers with similar volumes of business, but without Federal health care program referrals. Other suspect practices include, but are not limited to, discounts that are coupled with exclusive provider agreements and discounts or other pricing schemes made in conjunction with explicit or implicit agreements to refer other facility business. In sum, if any direct or indirect link exists between a price offered by a supplier or provider to a nursing facility for items or services that the nursing facility pays for out-of-pocket and referrals of Federal business for which the supplier or provider can bill a Federal health care program, the anti-kickback statute is implicated.

4. Hospices

Hospice services for terminally ill patients are typically provided in the patients' homes. In some cases, however, a nursing facility is the patient's home. In such cases, nursing facilities often arrange for the provision of hospice services in the nursing facility if the resident meets the hospice eligibility criteria and elects the hospice benefit. These arrangements pose several fraud and abuse risks. For example, to induce referrals, a hospice may offer a nursing facility remuneration in the form of free nursing services for non-hospice patients; additional room and board payments; [104] or inflated payments for providing hospice services to the hospice's patients.[105] Nursing facilities should be mindful that requesting or accepting remuneration from a hospice may subject the nursing facility and the hospice to liability under the anti-kickback statute if the remuneration might influence the nursing facility's decision to do business with the hospice.[106]

Some of the practices that are suspect under the anti-kickback statute include:

- A hospice offering free goods or goods at below fair-market value to induce a nursing facility to refer patients to the hospice;
- A hospice paying room and board payments to the nursing facility in amounts in excess of what the nursing facility would have received directly from Medicaid had the patient not been enrolled in hospice. Any additional payment must represent the fair-market value of additional services actually provided to that patient that are not included in the Medicaid daily rate;
- A hospice paying amounts to the nursing facility for additional services that Medicaid considers to be included in its room and board payment to the hospice;
- A hospice paying above fair-market value for additional services that Medicaid does not consider to be included in its room and board payment to the nursing facility;
- A hospice referring its patients to a nursing facility to induce the nursing facility to refer its patients to the hospice;
- A hospice providing free (or below fair-market value) care to nursing facility patients, for whom the nursing facility is receiving Medicare payment under the SNF benefit, with the expectation that after the patient exhausts the SNF benefit, the patient will receive hospice services from that hospice; and
- A hospice providing staff at its expense to the nursing facility.

For additional guidance on arrangements with hospices, nursing facilities should review OIG's Special Fraud Alert on Nursing Home Arrangements with Hospices.[107] Whenever possible, nursing facilities should structure their relationships with hospices to fit in a safe harbor, such as the personal services and management contracts safe harbor.[108]

5. Reserved Bed Arrangements

Sometimes hospitals arrange with nursing facilities to accept discharged Medicare patients. Under some reserved bed arrangements, hospitals provide remuneration to nursing facilities to keep certain beds available and open for the hospital's own patients.[109] Payments from hospitals to nursing facilities to reserve a bed may pose risk under the anti-kickback statute if one purpose of the arrangement is to induce referrals to the hospital.

These arrangements should be reviewed to ensure that the payment is not a disguised payment for referrals from the nursing facility to the hospital. Examples of some potentially problematic arrangements include: (1) Payments that are more than the actual cost to the nursing facility of holding an empty bed; (2) payments for "lost opportunity" or similar costs that are calculated based on a nursing facility's revenues for an occupied bed; and (3) payments for more beds than the hospital legitimately needs. Payments should be for the limited purpose of securing needed beds, not future referrals.

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[103] *See, e.g.*, OIG's September 22, 1999 letter regarding "Discount Arrangements Between Clinical Laboratories and SNFs" (referencing OIG Advisory Opinion No. 99–2 issued February 26, 1999), available on our Web site at *http://oig.hhs.gov/fraud/docs/safeharborregulations/rs.htm;* 56 FR 35952 at the preamble (July 29, 1991), "Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions," available on our Web site at *http://oig.hhs.gov/fraud/docs/safeharborregulations/072991.htm.*

[104] The Medicare reimbursement rate for routine hospice services provided in a nursing facility does not include room and board expenses, so payment for room and board may be the responsibility of the patient. CMS, Medicare Benefit Policy Manual, chapter 9, section 20.3, available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/.* For Medicaid patients, the State will pay the hospice at least 95 percent of the State's Medicaid daily nursing facility rate, and the hospice is then responsible for paying the nursing facility for the beneficiary's room and board. Section 1902(a)(13)(B) of the Act (42 U.S.C. 1396a(a)(13)(B)).

[105] Under the regulations at 42 CFR 418.80, hospices must generally furnish substantially all of the core hospice service themselves. Hospices are permitted to furnish non-core services under arrangements with other providers or suppliers, including nursing facilities. 42 CFR 418.56; CMS, State Operations Manual, chapter 2, section 2082C, available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/IOM/list.asp.*

[106] Under certain circumstances, a nursing facility that knowingly refers to a hospice patients who do not qualify for the hospice benefit may be liable for the submission of false claims. The Medicare hospice eligibility criteria are found at 42 CFR 418.20.

[107] OIG Special Fraud Alert on Fraud and Abuse in Nursing Home Arrangements with Hospices, March 1998, available on our Web site at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/hospice.pdf.*

[108] 42 CFR 1001.952(d).

[109] The Provider Reimbursement Manual provides as follows:

Providers are permitted to enter into reserved bed agreements, as long as the terms of that agreement do not violate the provisions of the statute and regulations which govern provider agreements which (1) Prohibit a provider from charging the beneficiary or other party for covered services; (2) prohibit a provider from discriminating against Medicare beneficiaries, as a class, in admission policies; or (3) prohibit certain types of payments in connection with referring patients for covered services. A provider may jeopardize its provider agreement or incur other penalties if it enters into a reserved bed agreement that violates these requirements.

CMS, Provider Reimbursement Manual, section 2105.3(D), available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/PBM.*

D. Other Risk Areas

1. Physician Self-Referrals

Nursing facilities should familiarize themselves with the physician self-referral law (section 1877 of the Act),[110] commonly known as the "Stark" law. The physician self-referral law prohibits entities that furnish "designated health services" (DHS) from submitting—and Medicare from paying—claims for DHS if the referral for the DHS comes from a physician with whom the entity has a prohibited financial relationship. This is true even if the prohibited financial relationship is the result of inadvertence or error. Violations can result in refunding of the prohibited payment and, in cases of knowing violations, CMPs, and exclusion from the Federal health care programs. Knowing violations of the physician self-referral law can also form the basis for liability under the False Claims Act.

Nursing facility services, including SNF services covered by the Part A PPS payment, are not DHS for purposes of the physician self-referral law. However, laboratory services, physical therapy services, and occupational services are among the DHS covered by the statute.[111] Nursing facilities that bill Part B for laboratory services, physical therapy services, occupational therapy services, or other DHS pursuant to the consolidated billing rules are considered entities that furnish DHS.[112] Accordingly, nursing facilities should review all financial relationships with physicians who refer or order such services to ensure compliance with the physician self-referral law.

When analyzing potential physician self-referral situations, the following three part inquiry is useful:

- Is there a *referral* (including, but not limited to, ordering a service for a resident) from a *physician* for a *designated health service?* If not, there is no physician self-referral issue. If yes, then the next inquiry is:
- Does the physician (or an *immediate family member*) have a *direct or indirect financial relationship* with the nursing facility? A financial relationship can be created by ownership, investment, or compensation; it need not relate to the furnishing of DHS. If there is no financial relationship, there is no physician self-referral issue. If there is a financial relationship, the next inquiry is:
- Does the financial relationship fit in an exception? If not, the statute is violated.

Detailed regulations regarding the italicized terms are set forth in regulations at 42 CFR 411.351 through 411.361 (substantial additional explanatory material appears in preambles to the final regulations: 66 FR 856 (January 4, 2001), 69 FR 16054 (March 26, 2004), and 72 FR 51012 (September 5, 2007)).[113]

Nursing facilities should pay particular attention to their relationships with attending physicians who treat residents and with physicians who are nursing facility owners, investors, medical directors, or consultants. The statutory and regulatory exceptions are key to compliance with the physician self-referral law. Exceptions exist for many common types of arrangements.[114] To fit in an exception, an arrangement must squarely meet all of the conditions set forth in the exception. Importantly, it is the actual relationship between the parties, and not merely the paperwork, that must fit in an exception. Unlike the anti-kickback safe harbors, which are voluntary, fitting in an exception is mandatory under the physician self-referral law. Compliance with a physician self-referral law exception does not immunize an arrangement under the anti-kickback statute. Therefore, arrangements that implicate the physician self-referral law should also be analyzed under the anti-kickback statute.

In addition to reviewing particular arrangements, nursing facilities can implement several systemic measures to guard against violations. First, many of the potentially applicable exceptions require written, signed agreements between the parties. Nursing facilities should enter into appropriate written agreements with physicians. In addition, nursing facilities should review their contracting processes to ensure that they obtain and maintain signed agreements covering all time periods for which an arrangement is in place. Second, many exceptions require fair-market value compensation for items and services actually needed and rendered. Thus, nursing facilities should have appropriate processes for making and documenting reasonable, consistent, and objective determinations of fair-market value and for ensuring that needed items and services are furnished or rendered. Nursing facilities should also implement systems to track non-monetary compensation provided annually to referring physicians (such as free parking or gifts) and ensure that such compensation does not exceed limits set forth in the physician self-referral regulations.

Further information about the physician self-referral law and applicable regulations can be found on CMS's Web site at *http://www.cms.hhs.gov/PhysicianSelfReferral/*. Information regarding CMS's physician self-referral advisory opinion process can be found at *http://www.cms.hhs.gov/PhysicianSelfReferral/07_advisory_opinions.asp#TopOfPage*.

2. Anti-Supplementation

As a condition of its Medicare provider agreement and under applicable Medicaid regulations and a criminal provision precluding supplementation of Medicaid payment rates, a nursing facility must accept the applicable Medicare or Medicaid payment (including any beneficiary coinsurance or copayments authorized under those programs), respectively, for covered items and services as the complete payment.[115] For covered items and services, a nursing facility may not charge a Medicare or Medicaid beneficiary, or another person in lieu of the beneficiary, any amount in addition to what is otherwise required to be paid under Medicare or Medicaid (*i.e.*, a cost-sharing amount). For example, an SNF may not condition acceptance of a beneficiary from a hospital upon receiving payment from the hospital or the beneficiary's family in an amount greater than what the SNF would receive under the PPS. For Medicare and Medicaid beneficiaries, a nursing facility may not accept supplemental payments, including, but not limited to, cash and free or discounted items and services, from a hospital or other source merely because the nursing facility considers the Medicare or Medicaid payment to be inadequate (although a nursing facility may accept donations unrelated to the care of specific patients). The supplemental payment would be a prohibited charge imposed by the nursing facility on another party

[110] 42 U.S.C. 1395nn.

[111] The complete list of DHS is found at section 1877(h)(6) of the Act (42 U.S.C. 1395nn(h)(6)) and 42 CFR 411.351.

[112] *See* 66 FR 856, 923 (January 4, 2001), "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," available on CMS's Web site at *http://www.cms.hhs.gov/PhysicianSelfReferral/Downloads/66FR856.pdf*.

[113] Available on CMS's Web site at *http://www.cms.hhs.gov/PhysicianSelfReferral*.

[114] Section 1877(b)–(e) of the Act (42 U.S.C. 1395nn(b)–(e)). *See also* 42 CFR 411.351–411.357.

[115] Section 1866(a) of the Act (42 U.S.C. 1395cc(a)); 42 CFR 489.20; section 1128B(d) of the Act (42 U.S.C. 1320a–7b(d)); 42 CFR 447.15; 42 CFR 483.12(d)(3).

for services that are already covered by Medicare or Medicaid.[116]

3. Medicare Part D

Medicare Part D extends voluntary prescription drug coverage to all Medicare beneficiaries, [117] including individuals who reside in nursing facilities. Like all Medicare beneficiaries, nursing facility residents who decide to enroll in Part D have the right to choose their Part D plans.[118] Part D plans offer a variety of drug formularies and have arrangements with a variety of pharmacies to administer drugs to the plan's enrollees. Nursing facilities also enter into arrangements with pharmacies to administer drugs. Typically, these are exclusive or semi-exclusive arrangements designed to ease administrative burdens and coordinate accurate administration of drugs to residents. When a resident is selecting a particular Part D plan, it may be that the Part D plan that best satisfies a beneficiary's needs does not have an arrangement with the nursing facility's pharmacy. CMS has stated that it expects nursing facilities "to work with their current pharmacies to assure that they recognize the Part D plans chosen by that facility's Medicare beneficiaries, or, in the alternative, to add additional pharmacies to achieve that objective." [119] CMS also suggests that a nursing facility "could contract exclusively with another pharmacy that contracts more broadly with Part D plans." [120]

Nursing facilities must be particularly careful not to act in ways that would frustrate a beneficiary's freedom of choice in choosing a Part D plan. CMS has stated that "[u]nder no circumstances should a nursing home require, request, coach or steer any resident to select or change a plan for any reason," nor should it "knowingly and/or willingly allow the pharmacy servicing the nursing home" to do the same.[121] Nursing facilities and their employees and contractors should not accept any payments from any plan or pharmacy to influence a beneficiary to select a particular plan. Beneficiary freedom of choice in choosing a Part D Plan is ensured by section 1860D–1 of the Act.[122] Nursing facilities may not limit this choice in the Part D program.

E. HIPAA Privacy and Security Rules

As of April 14, 2003, all nursing facilities that conduct electronic transactions governed by HIPAA are required to comply with the Privacy Rule adopted under HIPAA.[123] Generally, the HIPAA Privacy Rule addresses the use and disclosure of individuals' personally identifiable health information (called "protected health information" or PHI) by covered nursing facilities and other covered entities. The Privacy Rule also covers individuals' privacy rights to understand and control how their health information is used. The Privacy Rule also requires nursing facilities to disclose PHI to the individual who is the subject of the PHI or to the Secretary of the Department of Health and Human Services under certain circumstances. The Privacy Rule and helpful information about how it applies can be found on the Web site of the Department's Office for Civil Rights (OCR).[124] Questions about the Privacy Rule should be submitted to OCR.[125]

The Privacy Rule gives covered nursing facilities and other covered entities some flexibility to create their own privacy procedures. Each nursing facility should make sure that it is compliant with all applicable provisions of the Privacy Rule, including standards for the use and disclosure of PHI with and without patient authorization and the provisions pertaining to permitted and required disclosures.

The HIPAA Security Rule specifies a series of administrative, technical, and physical security safeguards for covered entities to ensure the confidentiality of electronic PHI.[126] Nursing facilities that are covered entities were required to be compliant with the Security Rule by April 20, 2005. The Security Rule requirements are flexible and scalable, which allows each covered entity to tailor its approach to compliance based on its own unique circumstances. Covered entities may consider their organization and capabilities, as well as costs, in designing their security plans and procedures. Questions about the HIPAA Security Rule should be submitted to CMS.[127]

IV. Other Compliance Considerations

A. An Ethical Culture

Every effective compliance program begins with a formal commitment to compliance by the nursing facility's governing body and senior management. Evidence of that commitment includes active involvement of the organizational leadership; allocation of adequate resources; a reasonable timetable for implementation of the compliance measures; and the identification of a compliance officer and compliance committee vested with sufficient autonomy, authority, and accountability to implement and enforce appropriate compliance measures. A nursing facility's leadership should foster an organizational culture that values, and even rewards, the prevention, detection, and resolution of problems. Moreover, a nursing facility's leadership and management should ensure that policies and procedures, such as compensation structures, do not create undue pressure to pursue profit over compliance. The effectiveness of these policies and procedures should be periodically re-evaluated. In short, the nursing facility should endeavor to develop a culture that values compliance from the top down and fosters compliance from the bottom up. Such an organizational culture is the foundation of an effective compliance program.

Although a clear statement of detailed and substantive policies and procedures—and the periodic evaluation of their effectiveness—are at the core of a compliance program, OIG recommends that nursing facilities also develop a general organizational statement of ethical and compliance principles to guide their operations. One common expression of this statement of principles is a code of conduct. The code should function as the nursing facility's constitution. It should be a document that details the fundamental principles, values, and framework for action within the organization. The code of conduct for a nursing facility should articulate a commitment to compliance by management, employees, and contractors. It should summarize the broad ethical and legal principles under which the nursing facility must operate.

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[116] *See id.; see also* CMS, Skilled Nursing Facility Manual, chapter 3, sections 317 and 318, available on CMS's Web site at *http://www.cms.hhs.gov/Manuals/PBM/list.asp*.

[117] Section 1860D–1 of the Act (42 U.S.C. 1395w 101).

[118] *Id.*

[119] *See* CMS Survey and Certification Group's May 11, 2006 letter to State Survey Agency Directors, available on CMS's Web site at *http://www.cms.hhs.gov/SurveyCertificationGenInfo/downloads/SCLetter06-16.pdf*.

[120] *Id.*

[121] *Id.*

[122] 42 U.S.C. 1395w–101.

[123] 45 CFR parts 160 and 164, subparts A and E; available at *http://www.hhs.gov/ocr/hipaa/finalreg.html*. In addition to the HIPAA Privacy and Security Rules, facilities should also take steps to adhere to the privacy and confidentiality requirements for residents' personal and clinical records, 42 CFR 483.10(e), and any applicable State privacy laws.

[124] OCR, "Office of Civil Rights—HIPAA," available at *http://www.hhs.gov/ocr/hipaa/*.

[125] Nursing facilities can contact OCR by following the instructions on its Web site, available at *http://www.hhs.gov/ocr/contact.html*, or by calling the HIPAA toll-free number, (866) 627–7748.

[126] 45 CFR parts 160 and 164, subparts A and C, available on CMS's Web site at *http://www.cms.gov/SecurityStandard/02_Regulations.asp*.

[127] Nursing facilities can contact CMS by following the instructions on its Web site, *http://www.cms.hhs.gov/HIPAAGenInfo/*.

The code of conduct should also include a requirement that professionals follow the ethical standards dictated by their respective professional organizations.

The code of conduct should be brief, easily readable, and cover general principles applicable to all members of the organization. OIG strongly encourages broad participation in creating and implementing an organization's code of conduct and compliance program. This may include, as appropriate, the participation and involvement of the nursing facility's board of directors, officers (including the chief executive officer), members of senior management, quality assurance staff, compliance staff, representatives from the medical and clinical staffs, and other nursing facility personnel in the development of all aspects of the compliance program, especially the code of conduct. Management and employee involvement in this process communicates a strong and explicit commitment by management to foster compliance with applicable Federal health care program requirements. It also communicates the need for all directors, officers, managers, employees, contractors, and medical and clinical staff members to comply with the organization's code of conduct and policies and procedures.

B. Regular Review of Compliance Program Effectiveness

Effective compliance requires effective systems and structures. The following elements are common to building effective compliance programs:

- Designation of a compliance officer and compliance committee;
- Development of compliance policies and procedures, including standards of conduct;
- Developing open lines of communication;
- Appropriate training and teaching;
- Internal monitoring and auditing;
- Response to detected deficiencies; and
- Enforcement of disciplinary standards.

Nursing facilities should regularly review the implementation and execution of their compliance program systems and structures. This review should be conducted annually. It should include an assessment of each of the basic elements individually, as well as the overall success of the program. This review should help nursing facilities identify any weaknesses in their compliance programs and implement appropriate changes. Nursing facilities seeking guidance on setting up effective compliance operations should review OIG's 2000 Nursing Facility CPG, which explains in detail the fundamental elements of a compliance program.[128] Nursing facilities may also wish to consult quality of care corporate integrity agreements (CIAs) entered into between OIG and parties settling specific matters.[129]

C. Communication to Decisionmakers

Good compliance practices may include the development of a mechanism, such as a "dashboard,"[130] designed to communicate effectively appropriate compliance and performance-related information to a nursing facility's board of directors and senior officers. The dashboard or other communication tool should include quality of care information. Further information and resources about quality of care dashboards are available on our Web site.[131]

When communication tools such as dashboards are properly implemented and include quality of care information, the directors and senior officers can, among other things: (1) Demonstrate a commitment to quality of care and foster an organization-wide culture that values quality of care; (2) improve the facility's quality of care through increased awareness of and involvement in the oversight of quality of care issues; and (3) track and trend quality of care data (*e.g.*, State agency survey results, outcome care and delivery data, and staff retention and turnover data) to identify potential quality of care problems, identify areas in which the organization is providing high quality of care, and measure progress on quality of care initiatives. Each dashboard should be tailored to meet the specific needs and sophistication of the implementing nursing facility, its board members, and senior officers. OIG views the use of dashboards, and similar tools, as a helpful compliance practice that can lead to improved quality of care and assist the board members and senior officers in fulfilling, respectively, their oversight and management responsibilities.

V. Self-Reporting

If the compliance officer, compliance committee, or a member of senior management discovers credible evidence of misconduct from any source and, after a reasonable inquiry, believes that the misconduct may violate criminal, civil, or administrative law, the nursing facility should promptly report the existence of the misconduct to the appropriate Federal and State authorities.[132] The reporting should occur within a reasonable period, but not longer than 60 days,[133] after determining that there is credible evidence of a violation.[134] Prompt voluntary reporting will demonstrate the nursing facility's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, prompt reporting of misconduct will be considered a mitigating factor by OIG in determining administrative sanctions (*e.g.*, penalties, assessments, and exclusion) if the reporting nursing facility becomes the subject of an OIG investigation.[135]

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[128] 2000 Nursing Facility CPG, *supra* note 2, at 14289.

[129] OIG, "Corporate Integrity Agreements," available on our Web site at *http://oig.hhs.gov/fraud/cias.html*.

[130] Much like the dashboard of a car, a "dashboard" is an instrument that provides the recipient with a user-friendly (*i.e.*, presented in an appropriate context) snapshot of the key pieces of information needed by the recipient to oversee and manage effectively the operation of an organization and forestall potential problems, while avoiding information overload.

[131] *See, e.g.*, OIG, "Driving for Quality in Long-Term Care: A Board of Director's Dashboard—Government-Industry Roundtable," available on our Web site at *http://oig.hhs.gov/fraud/docs/complianceguidance/Roundtable013007.pdf*

[132] Appropriate Federal and State authorities include OIG, CMS, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Food and Drug Administration, the Department's Office for Civil Rights, the Federal Trade Commission, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, the Health Resources and Services Administration, and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

[133] To qualify for the "not less than double damages" provision of the False Claims Act, the provider must provide the report to the government within 30 days after the date when the provider first obtained the information. 31 U.S.C. 3729(a).

[134] Some violations may be so serious that they warrant immediate notification to governmental authorities prior to, or simultaneous with, commencing an internal investigation. By way of example, OIG believes a provider should immediately report misconduct that: (i) is a clear violation of administrative, civil, or criminal laws; (ii) poses an imminent danger to a patient's safety; (iii) has a significant adverse effect on the quality of care provided to Federal health care program beneficiaries; or (iv) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

[135] OIG has published criteria setting forth those factors that OIG takes into consideration in determining whether it is appropriate to exclude an individual or entity from program participation pursuant to section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)) for violations of various fraud and abuse laws. *See* 62 FR 67392 (December 24, 1997), "Criteria for Implementing Permissive Exclusion Authority Under Section 1128(b)(7) of the Social Security Act."

To encourage providers to make voluntary disclosures, OIG published the Provider Self-Disclosure Protocol.[136] When reporting to the Government, a nursing facility should provide all relevant information regarding the alleged violation of applicable Federal or State law(s) and the potential financial or other impact of the alleged violation. The compliance officer, under advice of counsel and with guidance from governmental authorities, may be requested to continue to investigate the reported violation. Once the investigation is completed, and especially if the investigation ultimately reveals that criminal, civil, or administrative violations have occurred, the compliance officer should notify the appropriate governmental authority of the outcome of the investigation. This notification should include a description of the impact of the alleged violation on the applicable Federal health care programs or their beneficiaries.

VI. Conclusion

In today's environment of increased scrutiny of corporate conduct and increasingly large expenditures for health care, it is imperative for nursing facilities to establish and maintain effective compliance programs. These programs should foster a culture of compliance and a commitment to delivery of quality health care that begins at the highest levels and extends throughout the organization. This supplemental CPG is intended as a resource for nursing facilities to help them operate effective compliance programs that decrease errors, fraud, and abuse and increase compliance with Federal health care program requirements for the benefit of the nursing facilities and their residents.

Dated: April 10, 2008.

Daniel R. Levinson,

Inspector General.

[FR Doc. E8–7993 Filed 4–15–08; 8:45 am]

BILLING CODE 4152–01–P

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 Cell Structure and Function Study Section, June 4, 2008, 8 a.m. to June 5, 2008, 5 p.m., Latham Hotel, 3000 M Street, NW., Washington, DC, 20007 which was published in the **Federal Register** on April 4, 2008, 73 FR 18539–18542.

The meeting will be held one day only June 4, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8044 Filed 4–15–08; 8:45 am]

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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 Emphasis Panel; Member Conflicts: Psychopharmacology.

Date: May 21–22, 2008.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christine L. Melchior, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.

Date: May 29–30, 2008.

Time: 8 a.m. to 3 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: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: May 29–30, 2008.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pilot-scale Libraries for High-throughput Screening.

Date: May 29, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: May 29–30, 2008.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *boundst@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.

Date: June 5–6, 2008.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: San Francisco Airport Marriott, 1800 Old Bayshore Highway, Burlingame, CA 94010.

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, (301) 435–1154, *sheardn@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Etiology Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 4 p.m.

[136] *See* 63 FR 58399 (October 30, 1998), "Publication of the OIG's Provider Self-Disclosure Protocol," available on our Web site at *http://oig.hhs.gov/authorities/docs/selfdisclosure.pdf.*

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Victor A. Fung, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892, 301–435–3504, *fungv@csr.nih.gov.*

Name of Committee: Digestive Sciences Integrated Review Group; Gastrointestinal Mucosal Pathobiology Study Section.

Date: June 9, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Brookshire Suites, 120 East Lombard Street, Baltimore, MD 21202.

Contact Person: Peter J. Perrin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0682, *perrinp@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Tumor Microenvironment Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton Hotel, Tysons Corner, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Persons: Eun Ah Cho, PhD, 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: Brain Disorders and Clinical Neuroscience Integrated Review Group; Anterior Eye Disease Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Persons: Jerry L. Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175,*taylorje@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Washington, DC, 1250 22nd Street, NW., Washington, DC 20037.

Contact Persons: Janet M. Larkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 310–435–1026,*larkinja@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Persons: Tina McIntyre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group, Tumor Progression and Metastasis Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hamilton Crowne Plaza, 1001 14th Street, NW., Washington, DC 20005.

Contact Persons: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477,*zargerma@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: June 9–10, 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 Persons: Francois Boller, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7848, Bethesda, MD 20892, 301–435–1019, *bollerf@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, and Regeneration Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Persons: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Molecular Oncogenesis Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Persons: Joanna M. Watson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, 301–435–1048, *watsonjo@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics B Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Persons: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currier@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group; Cancer Genetics Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Persons: Zhiqiang Zou, PhD, MD, 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: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: June 9, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Persons: Sooja K. Kim, PhD, RD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: June 9–10, 2008.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Persons: Gebretateos Woldegiorgis, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, 301–435–1717, *woldegig@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: June 9–10, 2008.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Persons: Alexander Yakovlev, PhD, Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: June 9–10, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Persons: Sandra Melnick Seitz, DRPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–435–1251, *melnicks@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Injury: SRO Conflict.

Date: June 9, 2008.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Persons: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–435–1197, *bsokolov@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: April 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8047 Filed 4–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary Alternative Medicine; Notice of 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 National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of 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/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: June 6, 2008.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 11 a.m. to 4 p.m.

Agenda: Opening remarks by the Director of the National Center for Complementary and Alternative Medicine, presentation of a new research initiative, and other business of the Council.

Place: National Institutes of Health Neuroscience Building, 6001 Executive Boulevard, Conference Rooms C & D, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–2014.

The public comments session is scheduled from 3:30–4 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland, 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on June 4, 2008. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (June 16, 2008) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: April 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8069 Filed 4–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; Loan Repayment Program for Health Disparities and Clinical Research—Panel B.

Date: May 8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lorrita Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd, Suite 800, Bethesda, MD 20892–5465, (301) 402–1366, *watsonl@mail.nih.gov*.

Dated: April 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8064 Filed 4–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Science Education Awards Review.

Date: May 16, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, 3123 Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DH HS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8067 Filed 4–15–08; 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 Intercellular Interactions Study Section, June 5, 2008, 8 a.m. to June 6, 2008, 5:30 p.m., George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC, 20037 which was published in the **Federal Register** on April 4, 2008, 18539–18542.

The meeting will be held one day only June 5, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8041 Filed 4–15–08; 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 Macromolecular Structure and Function A Study Section, June 5, 2008, 8 a.m. to June 6, 2008, 6 p.m., Doubletree Hotel Washington, DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005 which was published in the **Federal Register** on April 4, 2008, 73 FR 18539–18542.

The meeting will be held one day only, June 5, 2008, from 8 a.m. to 6 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: April 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8050 Filed 4–15–08; 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 Center for Scientific Review Special Emphasis Panel, May 28, 2008, 8 a.m. to May 29, 2008, 5 p.m., Admiral Fell Inn, 888 South Broadway, Baltimore, MD, 21231 which was published in the **Federal Register** on April 4, 2008, 73 FR 18539–18542.

The meeting will be held May 29, 2008 to May 30, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 9, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–8071 Filed 4–15–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request Renewal From OMB of One Current Public Collection of Information: Flight Crew Self-Defense Training—Registration and Evaluation

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collection involves requesting, name, contact information, airline employee number and Social Security number (last four digits) from flight and cabin crew members of air carriers to verify employment status to confirm eligibility to participate in advanced self-defense training provided by TSA. Eligible training participants are flight crew members of an airline conducting scheduled passenger operations. See 49 U.S.C. 44918. Additionally, each participant is asked to complete a voluntary course evaluation form after the training concludes.

DATES: Send your comments by June 16, 2008.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651 or facsimile (703) 603–0822.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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 information collection request (ICR) documentation is available at *http://www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0028, Flight Crew Self-Defense Training—Registration and Evaluation. TSA is seeking to renew the ICR, currently approved under OMB number 1652–0028, to continue compliance with a statutory mandate. Under Title VI, Sec. 603 of Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176, 117 Stat. 2490, 2563, Dec. 12, 2003), TSA is required to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of air carriers providing scheduled passenger air transportation. See 49 U.S.C. 44918(b).

TSA collects limited biographical information from flight and cabin crew members to confirm their eligibility to participate in this training. TSA also asks participants to complete an anonymous and voluntary evaluation form after participation in the training to assess the quality of the training. TSA requests this renewal so that TSA may continue confirming participants' eligibility and attendance for the training program, as well as to continue to assess training quality. TSA confirms the eligibility of the participant by contacting the participant's employer. Attendance is confirmed by comparing registration information against a sign-in sheet provided in the classroom. The estimated number of annual respondents is 3,000 and estimated annual burden is 750 hours. There is no estimated annual cost burden to respondents.

Issued in Arlington, Virginia, on April 9, 2008.

Fran Lozito,

Director, Business Management Office, Operational Process and Technology.

[FR Doc. E8–8088 Filed 4–15–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Critical Facility Information of the Top 100 Most Critical Pipelines

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. This collection provides TSA critical facility and annual product through-put information from owners or operators of the nation's largest pipelines, and is necessitated by the requirements set forth in the Implementing the Recommendations of the 9/11 Commission Act of 2007.

DATES: Send your comments by June 16, 2008.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA–32, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651 or facsimile (703) 603–0822.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), 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 ICR documentation is available at *http://www.reginfo.gov*. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Purpose of Data Collection

Section 1557(b) of the Implementing the Recommendations of the 9/11 Commission Act of 2007, specifically tasks TSA to develop and implement a plan for inspecting certain critical facilities of the 100 most critical pipeline systems. See Pub. L. 110–53, 121 Stat. 266 at 475 (Aug. 3, 2007). The predominant criterion used to determine the nations top 100 pipeline systems in terms of criticality is the quantity of hazardous liquid or natural gas product that is transported through a pipeline in one year (annual-through-put). Using annual through-put data from Federal and commercially available data as a preliminary determinant, TSA has selected the nation's top 125 pipeline systems from which annual through-put and critical facility information will be requested. TSA is requesting annual product through-put information from these top 125 pipeline systems in order to ensure that selection of the top 100 pipeline systems for inspection reflects the most recent throughput data and is as complete and accurate as possible.

Description of Data Collection

TSA is requesting information from the owners/operators of 125 systems. Within each of the system owner/operator companies, both the annual through-put and critical facility information has already been determined and is readily available to employees within the respective companies. System through-put is a figure already determined and frequently used by pipeline companies for various business, financial, and operations performance purposes. Per guidance set forth in the "Pipeline Security Circular September 4, 2002" (2002 Guidelines) issued by the U.S.

Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA), formerly the Office of Pipeline Safety, pipeline companies had to determine critical facilities in accordance with guidance provided in that circular by December 31, 2003. Therefore, very little additional burden will be incurred by the pipeline companies in determining or producing this information. Consequently, the burden to pipeline owners/operators from to which information is requested lies only in compiling, reviewing, and transmitting the currently existing information to TSA. The time estimate breakdown is as follows: TSA will request the information from the nation's top 125 pipeline systems. TSA estimates that system owners and operators would spend a maximum of four hours per system to collect, review, and submit the information via email to TSA. Thus, TSA estimates the total annual burden to the public would be (125 owners or operators) × (4 hours per owner or operator) = 500 total hours per year.

Use and Handling of Results

TSA will use annual product throughput values as a significant factor in determining the most critical systems. The lists of a system's critical facilities and amplifying information are determined by the individual pipeline system owners or operators for their respective systems through their own site assessment process, and will be used by TSA to develop a plan for TSA to inspect the top 100 sites as required in section in 1557(b) of the Implementing Recommendation for the 911 Commission Act of 2007.

Both the request for information sent by TSA and the responses from subject pipeline system owners or operators will be conducted via electronic mail. To the extent that the information provided by owners or operators is Sensitive Security Information (SSI), it will be protected in accordance with procedures meeting the transmission, handling and storage requirements of SSI set forth in 49 CFR parts 15 and 1520.

Issued in Arlington, Virginia, on April 9, 2008.

Fran Lozito,

Director, Business Management Office, Operational Process and Technology.

[FR Doc. E8–8096 Filed 4–15–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–19]

Disaster Housing Assistance Program (DHAP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The paperwork involved in this action involves all activities related to the Disaster Housing Assistance Program (DHAP) from execution of the a grant agreement to case management. HUD will invite public housing agencies that currently administer the Housing Choice Voucher program to administer DHAP based on several factors such as where the DHAP eligible families are currently residing or have indicated they wish to receive DHAP assistance.

DATES: *Comments Due Date: May 16, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0252) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Disaster Housing Assistance Program (DHAP).

OMB Approval Number: 2577–0252.

Form Numbers: HUD–5255, HUD–5250.

Description of the Need for the Information and Its Proposed Use: The paperwork involved in this action involves all activities related to the Disaster Housing Assistance Program (DHAP) from execution of the a grant agreement to case management. HUD will invite public housing agencies that currently administer the Housing Choice Voucher program to administer DHAP based on several factors such as where the DHAP eligible families are currently residing or have indicated they wish to receive DHAP assistance.

Frequency of Submission: Quarterly, Weekly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	700	671		0.726		341,425

Total Estimated Burden Hours: 341,425.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 10, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer. Office of the Chief Information Officer.

[FR Doc. E8–8200 Filed 4–15–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–21]

HUD Loan Sale Bidder Qualification Statement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Bidder Qualifications Statement solicits from prospective bidders the basic qualifications required for bidding including but not limited to, purchaser information (name of purchaser, corporation entity, address, tax ID), business type, net worth and equity size. By executing the Qualification Statement, the purchaser certifies, represents and warrants to HUD that each of the statements included are true and correct as to the purchaser and thereby qualifies them to bid.

DATES: *Comments Due Date: May 16, 2008.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD Loan Sale Bidder Qualification Statement.

OMB Approval Number: 2502–NEW.

Form Numbers: HUD–90092.

Description of the Need for the Information and Its Proposed Use: The Bidder Qualifications Statement solicits from prospective bidders the basic qualifications required for bidding including but not limited to, purchaser information (name of purchaser, corporation entity, address, tax ID), business type, net worth and equity size. By executing the Qualification Statement, the purchaser certifies, represents and warrants to HUD that each of the statements included are true and correct as to the purchaser and thereby qualifies them to bid.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	22,900	0.022		0.75		390

Total Estimated Burden Hours: 390.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 10, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–8190 Filed 4–15–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS—R4–ES–2008–N0043; 40120–1113–0000; ABC Code: C4]

Endangered and Threatened Wildlife and Plants; 5-Year Status Review of 18 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is initiating 5-year status reviews of the Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*), Audubon's crested caracara (*Polyborus plancus audubonii*), Gulf sturgeon (*Acipenser oxyrinchus desotoi*), Stock Island tree snail (*Orthalicus reses* (not incl. *nesodryas*)), four-petal pawpaw (*Asimina tetramera*), Florida golden aster (*Chrysopsis floridana*), Apalachicola rosemary (*Conradina glabra*), Okeechobee gourd (*Cucurbita okeechobeensis* ssp. *okeechobeensis*), beautiful pawpaw (*Deeringothamnus pulchellus*), Garrett's mint (*Dicerandra christmanii*), scrub mint (*Dicerandra frutescens*), Harper's beauty (*Harperocallis flava*), white birds in a nest (*Macbridea alba*), Godfrey's butterwort (*Pinguicula ionantha*), scrub plum (*Prunus geniculata*), Florida skullcap (*Scutellaria floridana*), gentian pinkroot (*Spigelia gentianoides*), and Florida ziziphus (*Ziziphus celata*), under section 4(c)(2) of the Endangered Species Act of 1973, as amended (Act). The purpose of reviews conducted

under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.11 and 17.12) is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct this review, information submitted for our consideration must be received on or before June 16, 2008. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Information submitted on the Florida golden aster and scrub plum should be sent to Sandy MacPherson, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216, fax 904–232–2404. Information on the Key Largo cotton mouse, Audubon's crested caracara, Stock Island tree snail, four-petal pawpaw, Okeechobee gourd, Garrett's mint, scrub mint, beautiful pawpaw, and Florida ziziphus should be sent to Cindy Schulz, South Florida Field Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960, fax 772–562–4288. Information on the Gulf sturgeon, Apalachicola rosemary, Harper's beauty, white birds in a nest, Godfrey's butterwort, Florida skullcap, and gentian pinkroot should be sent to Janet Mizzi, Panama City Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Avenue, Panama City, Florida 32405, fax 850–763–2177. Information received in response to this notice of review will be available for public inspection by appointment, during regular business hours, at the same addresses.

FOR FURTHER INFORMATION CONTACT: Sandy MacPherson at the Jacksonville, Florida, address above for the Florida golden aster and scrub plum (telephone, 904/232–2580, ext. 110, e-mail *sandy_macpherson@fws.gov*); Cindy Schulz at the Vero Beach, Florida, address above for the Key Largo cotton mouse, Audubon's crested caracara, Stock Island tree snail, four-petal pawpaw, Okeechobee gourd, Garrett's mint, scrub mint, beautiful pawpaw, and Florida ziziphus (telephone, 772/562–3909, ext. 305, e-mail *cindy_schulz@fws.gov*); and Janet Mizzi at the Panama City, Florida, address above for the Gulf sturgeon, Apalachicola rosemary, Harper's beauty, white birds in a nest, Godfrey's butterwort, Florida skullcap, and gentian pinkroot (telephone, 850/769–0552, ext. 247, e-mail *janet_mizzi@fws.gov*).

SUPPLEMENTARY INFORMATION: Under the Act (16 U.S.C. 1531 *et seq.*), the Service maintains a list of endangered and threatened wildlife and plant species at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. Delisting a species must be supported by the best scientific and commercial data available and only considered if such data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. Amendments to the List through final rules are published in the **Federal Register**.

The regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the following species that are currently listed as endangered: Key Largo cotton mouse, four-petal pawpaw, Florida golden aster, Apalachicola rosemary, Okeechobee gourd, beautiful pawpaw, Garrett's mint, Scrub mint, Harper's beauty, gentian pinkroot, scrub plum, and Florida ziziphus. The other 6 species in this notice are currently listed as threatened. The List is also available on our internet site at *http://endangered.fws.gov/wildlife.html#Species*.

What Information Is Considered in the Review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Definitions Related to This Notice

We provide the following definitions to assist individuals submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered Or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

What Could Happen as a Result of This Review?

If we find that there is new information concerning any of these 18 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under their current status.

Public Solicitation of New Information

We request any new information concerning the status of any of these 18

species. See "What information is considered in the review?" heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses, etc., but if you wish us to withhold this information, you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documental circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: February 19, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–8124 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0009; 40136–1265–0000–S3]

Grand Bay National Wildlife Refuge, Jackson County, MS, and Mobile County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Grand Bay National Wildlife Refuge for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the Final CCP.

DATES: To ensure consideration, we must receive comments by May 16, 2008.

ADDRESSES: Requests for copies of the Draft CCP/EA should be addressed to: Grand Bay National Wildlife Refuge, 6005 Bayou Heron Road, Moss Point, MS 39562; Telephone: 601/475–0765. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet Web site *http://southeast.fws.gov/planning*. Comments on the Draft CCP/EA may be submitted to the above address or via electronic mail to: *mike_dawson@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Dawson, Refuge Planner, Jackson, MS; Telephone: 601/965–4903, Ext. 20.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Grand Bay National Wildlife Refuge. We started the process through a notice in the **Federal Register** on December 29, 2005 (70 FR 77176).

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act and NEPA.

CCP Alternatives, Including Our Proposed Alternative

We developed four alternatives for managing the refuge and chose Alternative C as the proposed action. Each alternative would pursue the same four broad refuge goals. These goals are (1) Wildlife; (2) habitat; (3) public use; and (4) refuge administration.

Alternatives

A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A: Current Management (No Action)

Alternative A would maintain the current management direction, that is, the refuge's habitats and wildlife populations would continue to be managed as they have in recent years. Public use patterns would remain relatively unchanged from those that exist at present.

We would support national and regional plans to promote management actions that would provide for viable populations of native fish and wildlife species and habitats, with special emphasis on wet pine savanna.

There would be no active, direct management of waterfowl or other migratory bird populations. All sightings and the presence of threatened and endangered species would be documented on the refuge. However, no active efforts would be undertaken to inventory other wildlife.

We would maintain approximately 1,000 acres of pine savanna, which is the existing acreage. No active management would be undertaken to improve the habitat condition of forested wetlands. We would continue to utilize prescribed fire to manage habitats and reduce hazardous fuels on approximately 1,000 acres; furthermore, we would attempt to set prescribed fires on a 2- to 3-year rotation and to suppress wildfires. In partnership with the National Estuarine Research Reserve (NERR), we would annually control 20–30 acres of cogongrass and Chinese tallow.

We would identify and protect natural and cultural resources of the refuge. We would seek to acquire 90 percent of all lands within the approved acquisition boundary within 15 years of CCP approval. Through a partnership with NERR, we would protect shell middens on the refuge. In order to pursue these and other objectives, we would provide one full-time law enforcement officer.

We would provide opportunities for quality, wildlife-dependent public uses, leading to greater understanding and enjoyment of fish, wildlife, and the Gulf Coast ecosystems contained within the refuge.

We would continue to serve the public without a Visitor Services' Plan. In partnership with NERR, we would operate a joint research, office, and education facility/visitor center to

provide benefits to refuge visitors. We would continue to allow fishing and provide hunting for deer, squirrel, and waterfowl in keeping with State regulations and seasons.

With our limited support, NERR would continue environmental education and interpretation at current levels. This would include participation in community events, on- and off-site environmental education, guided tours, and interpretive trails. Also in partnership with NERR, we would maintain current wildlife observation and photography programs and facilities.

We would cooperate with NERR to provide for sufficient staffing, facilities, and infrastructure to implement a comprehensive refuge management program. We would maintain Grand Bay Refuge's current staff of two—the refuge manager and one law enforcement officer.

Alternative B: Custodial or Passive Management

Alternative B would emphasize custodial management, also called passive management, which, in general, means that we would not actively intervene in the process of natural succession. There would be no active habitat management, including no use of prescribed fire or selective logging to open up dense forest understories.

We would support national and regional plans to promote management actions that would provide for viable populations of native fish and wildlife species and habitats, with special emphasis on wet pine savanna. We would work toward achieving a number of objectives in pursuit of the wildlife goal.

There would be no active, direct management of waterfowl or other migratory bird populations. Sightings and presence of threatened and endangered species would be documented on the refuge; however, this would be a more constrained effort than in Alternative A. Moreover, no active efforts would be undertaken to inventory other wildlife.

Alternative B does not have a wet pine savanna objective. This habitat type would neither be encouraged nor discouraged at Grand Bay Refuge under this alternative. Likewise, there would be no active management to improve the habitat condition of forested wetlands. In addition, we would not utilize prescribed fire to set back succession or manipulate habitats and plant communities. However, we would suppress all wildfires, in keeping with our policy.

Control of invasive plant species would continue on a limited basis under this alternative. In partnership with NERR, we would annually control 5–10 acres of cogongrass and Chinese tallow on the refuge.

We would identify and protect natural and cultural resources of the refuge. We would pursue land protection programs and would provide law enforcement. We would seek to acquire 90 percent of all lands within the approved acquisition boundary within 15 years of CCP approval. Through a partnership with NERR, we would continue to protect shell middens on the refuge. We would not undertake any additional efforts on behalf of discovering, protecting, and interpreting cultural resources, such as preparation and implementation of a Cultural Resources' Management Plan.

There would be no Service-provided law enforcement on the refuge under the custodial or passive management alternative. As a result, no public hunting would be permitted, because the presence of hunters on the refuge necessitates a law enforcement presence to ensure public safety and enforce compliance with State hunting regulations and refuge rules.

We would continue to serve the public without the overall guidance and direction of a Visitor Services' Plan. NERR would operate the joint research, office, and education facility/visitor center. We would continue to allow fishing in State waters on the refuge.

NERR would continue environmental education and interpretation at current levels, including participation in community events, on- and off-site environmental education, guided tours, and interpretive trails. NERR would also maintain current wildlife observation and photography programs and facilities.

Due to scaled-back direct management responsibilities for habitat, wildlife populations, and visitor services, under this alternative there would be no staff present on Grand Bay Refuge. The nearest Service personnel would be located at Mississippi Sandhill Crane National Wildlife Refuge.

Alternative C: Optimize Wildlife and Habitat Management (Proposed Action)

Alternative C would optimize wildlife and habitat management on Grand Bay National Wildlife Refuge. We would support national and regional plans to promote management actions that would provide for viable populations of native fish and wildlife species and habitats, with special emphasis on wet pine savanna.

Within 15 years of CCP approval, we would support the annual population objective of the North American Waterfowl Management Plan by contributing 20 percent (3,600 ducks) of a midwinter population of approximately 18,000 ducks in the Coastal Mississippi Wetlands Initiative Area. For all other migratory birds, within 15 years of CCP approval, we would provide habitats sufficient to meet population goals of regional and national bird conservation plans.

We would create and enhance favorable conditions for gopher tortoises (200 acres) and for the possible reintroduction of 12–15 Mississippi sandhill cranes (5–7 nesting pairs) and the gopher frog (creating two ponds). Over the same timeframe, we would develop and maintain inventories for small mammals, butterflies, reptiles, amphibians, and possibly other taxa.

Within 15 years of CCP approval, we would restore 2,500 acres of wet pine savanna habitat, supporting primarily grassy-herbaceous dominated conditions to benefit grassland birds. We would also aim to restore forest structure to promote super-emergent trees, cavities, and understory structure on approximately 2,000 acres to benefit migratory land birds. We would utilize prescribed fire to manage habitat and reduce hazardous fuels on approximately 5,000 acres; we would aim to set prescribed fires on a 2- to 3-year rotation with 50 percent of burns during the growing season. We would suppress wildfires.

In partnership with NERR, we would annually control 50 acres of cogongrass and Chinese tallow, while controlling other invasive flora opportunistically.

We would identify and protect natural and cultural resources of the refuge. We would seek to acquire 100 percent of the lands with the approved acquisition boundary within 15 years of CCP approval. We would develop and begin to implement a Cultural Resources' Management Plan that would be used to provide overall management direction for cultural resources at Grand Bay Refuge. In order to protect these resources, we would provide one additional law enforcement officer.

In partnership with NERR, we would operate a new joint research, office, and education facility/visitor center to provide benefits to refuge visitors. We would also continue to allow fishing and provide hunting for deer, squirrel, and waterfowl consistent with State regulations and seasons. With limited refuge support, NERR would continue environmental education and interpretation at current levels, including participation in community

events, on- and off-site environmental education, guided tours, and interpretive trails. In partnership with NERR, we would maintain current wildlife observation and photography programs and facilities.

We would have the same staff as under Alternative A, plus one biologist, one park ranger, one biological technician, one equipment operator, and one law enforcement officer, for a total of seven employees.

Alternative D—Optimize Visitor Services

Alternative D would optimize visitor services on Grand Bay National Wildlife Refuge. This alternative would attempt to substantially expand opportunities for public use on the refuge.

We would support national and regional plans to promote management actions that would provide for viable populations of native fish and wildlife species and habitats, with special emphasis on wet pine savanna.

There would be no active, direct management of waterfowl or other migratory bird populations. All sightings and the presence of threatened and endangered species would be documented on the refuge. Also, within 15 years of CCP approval, we would develop and maintain inventories for small mammals, butterflies, reptiles, amphibians, and possibly other taxa. We would maintain approximately 1,000 acres of pine savanna, which is the existing acreage. No active management would be undertaken to improve the habitat condition of forested wetlands. We would continue to utilize prescribed fire to manage habitat and reduce hazardous fuels on approximately 1,000 acres; furthermore, we would attempt to set prescribed fires on a 2- to 3-year rotation. We would suppress wildfires. In partnership with NERR, we would annually control 20–30 acres of cogongrass and Chinese tallow.

We would aim to acquire 100 percent of lands within the approved acquisition boundary within 15 years of CCP approval. Through an ongoing partnership with NERR, we would protect the refuge's shell middens. In order to protect resources and the public at Grand Bay, we would provide two law enforcement officers.

Within three years of CCP completion and approval, we would develop a Visitor Services' Plan to be used in expanding public use facilities and opportunities on the refuge. As in Alternative A, under Alternative D, in partnership with NERR, we would operate a new joint research, office, and education facility/visitor center to provide benefits to refuge visitors. In addition, we would develop a new welcome center along Interstate 10 near the interchange with Franklin Creek Road (Exit 75).

Within five years of CCP approval, we would develop a Hunt Plan that coordinates hunting with other increased public uses, such as wildlife observation and photography.

We would also implement our own program of expanded environmental education and interpretation to complement NERR's efforts, in keeping with the new Visitor Services' Plan. In partnership with NERR, we would implement expanded opportunities for wildlife observation and photography, such as a canoe/kayak trail, photo blind(s), and an elevated marsh observation platform at the "Goat Farm."

In order to provide for expanded visitor services under Alternative D, we would increase the size of the staff from the current two employees. The new positions Alternative D calls for include: One assistant manager, one park ranger, one equipment operator, and two law enforcement officers for a total of seven employees.

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.

Next Step

After the comment period ends for the Draft CCP/EA, we will analyze the comments and address them in the form of a Final CCP and Finding of No Significant Impact.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 8, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–8109 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0053).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for "Nonferrous Metals Surveys (31 USGS forms)." This notice provides the public an opportunity to comment on the paperwork burden of these forms.

DATES: Submit written comments by June 16, 2008.

ADDRESSES: You may submit comments on this information collection to the Department of the Interior, USGS, via:

- E-mail: *atravnic@usgs.gov*. Use Information Collection Number 1028–0053 in the subject line.
- Fax: (703) 648–7069. Use Information Collection Number 1028–0053 in the subject line.
- Mail or hand-carry comments to the Department of the Interior; USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. Please reference Information Collection 1028–0053 in your comments.

FOR FURTHER INFORMATION PLEASE CONTACT: Scott F. Sibley at (703) 648–4976. Copies of the forms can be obtained at no cost by contacting the USGS clearance officer at the phone number listed below.

SUPPLEMENTARY INFORMATION:

Title: Nonferrous Metals Surveys.

OMB Control Number: 1028–0053.

Form Number: Various (31 forms).

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonferrous and related nonfuel mineral commodities, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

We will protect information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations

(43 CFR part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked. We intend to release data collected on these 31 forms only in a summary format that is not company-specific.

Frequency: Monthly, quarterly, and annually.

Estimated Number and Description of Respondents: Approximately 1,801 producers and consumers of nonferrous and related metals. Respondents are canvassed for one frequency period (e.g., monthly respondents are not canvassed annually).

Estimated Number of Responses: 5,339.

Annual Burden Hours: 3,973.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for these 31 forms is 4,062 hours. We estimate the public reporting burden averages 20 minutes to 2 hours per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and you are not required to respond to, 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: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (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, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provides the required 60-day public comment period.

USGS Information Collection Clearance Officer: Alfred Travnicek, 703–648–7231.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. E8–7990 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0062).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for "Industrial Minerals Surveys, (38 USGS forms)." This notice provides the public an opportunity to comment on the paperwork burden of these forms.

DATES: Submit written comments by June 16, 2008.

ADDRESSES: You may submit comments on this information collection to the Department of the Interior, USGS, via:

- *E-mail: atravnic@usgs.gov.* Use Information Collection Number 1028–0062 in the subject line.
- *Fax:* (703) 648–7069. Use Information Collection Number 1028–0062 in the the subject line.
- *Mail* or hand-carry comments to the Department of the Interior; USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. Please reference Information Collection 1028–0062 in your comments.

FOR FURTHER INFORMATION PLEASE CONTACT: Scott F. Sibley at (703) 648–4976. Copies of the forms can be obtained at no cost by contacting the USGS clearance officer at the phone number listed below.

SUPPLEMENTARY INFORMATION:

Title: Industrial Minerals Surveys.

OMB Control Number: 1028–0062.

Form Number: Various (38 forms).

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonfuel mineral commodities. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

We will protect information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked. We intend to release data collected on these 38 forms only in a summary format that is not company-specific.

Frequency: Monthly, Quarterly, Semiannually, and Annually.

Estimated Number and Description of Respondents: Approximately 15,990 producers and consumers of industrial minerals. Respondents are canvassed for one frequency period (e.g., monthly respondents are not canvassed annually).

Estimated Number of Responses: 18,336.

Annual Burden Hours: 12,637.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved "hour" burden for these 38 forms is 11,716 hours. We estimate the public reporting burden averages 15 minutes to 2 hours per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and you are not required to respond to, 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: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) (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, we publish this **Federal Register** notice announcing that we will submit this ICR to OMB for approval. The notice provides the required 60-day public comment period.

USGS Information Collection Clearance Officer: Alfred Travnicek, 703–648–7231.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. E8–7991 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–9 10–08–1 739–NSSI]

Notice of Public Meeting, North Slope Science Initiative, Science Technical Advisory Panel

AGENCY: Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI) Science Technical Advisory Panel (STAP) will meet as indicated below:

DATES: The meeting will be held Friday, May 9, 2008, in Fairbanks, Alaska. The meeting will begin at 9 a.m. at the University of Alaska Fairbanks, O'Neill Building, Room 201. Public comments will begin at 3 p.m.

FOR FURTHER INFORMATION CONTACT: John F. Payne, PhD, Executive Director, North Slope Science Initiative (910), c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271–3431 or e-mail *john_f_payne@blm.gov*.

SUPPLEMENTARY INFORMATION: The NSSI, STAP provides advice and recommendations to the NSSI Oversight Group (OG) regarding priority needs for management decisions across the North Slope of Alaska. These priority needs may include recommendations on inventory, monitoring, and research activities that lead to informed land management decisions. The topics to be discussed at the meeting include:

Task orders to the STAP

Reports and Recommendations from the STAP chair

NSSI priority issues and projects

Other topics the OG or STAP may raise

All meetings are open to the public. The public may present written comments to the STAP through the NSSI Executive Director. When making public comment, participants should know that their address, phone number, e-mail address, or other personal identifying information in their comment, along with their entire comment, may be made publicly available at any time. Commenters can ask that personal identifying information be withheld from their comments, but this cannot be guaranteed. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the NSSI Executive Director.

Dated: April 8, 2008.

Thomas P. Lonnie,

Alaska State Director.

[FR Doc. E8–7978 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–JA–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–DF; HAG 08–0090]

Southeast Oregon Resource Advisory Council: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of the Interior BLM announces the following advisory committee meeting:

Name: Southeast Oregon Resource Advisory Council (SEORAC).

Time and Date: 8 a.m. May 8, 2008; 8 a.m. May 9, 2008.

Place: BLM, Lakeview District Office, 1301 South G Street, Lakeview, Oregon 97630.

Status: Open to the public.

Matters To Be Considered: The SEORAC will consider land allocation designations at the Sand Dunes east of Christmas Valley, Sagebrush Cooperative progress, Southeast Oregon Geographic Information Systems atlas status, Climate Change initiatives, and transportation planning strategies for lands administered by the Oregon and Washington BLM and Fremont-Winema National Forests. Council members will also hear updates from designated federal officials, provide orientation to new members, review the new Charter and Standard Operating Procedures, tour North Lake County, give liaison and subgroup reports, establish meeting priorities and develop agenda items for the next meeting. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 11:30 a.m. on May 9, 2008. Those who verbally address the SEORAC during the public comment period are asked to provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

For Further Information Contact: Program information, meeting records and a roster of council members may be obtained from Scott Stoffel, public affairs specialist, 1301 South G Street, Lakeview, Oregon 97630; (541) 947–6237. The meeting agenda will be posted at *http://www.blm.gov/or/rac/seorrac-minutes.php* when available.

Should you require reasonable accommodation, please contact the BLM Lakeview District at (541) 947–2177 as soon as possible.

Shirley Gammon,

District Manager.

[FR Doc. E8–8100 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–963–1430–ET; F–84742]

Public Land Order No. 7703; Extension of Public Land Order No. 6705, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the withdrawal created by Public Land Order No. 6705, for an additional 20-year period. This extension is necessary to continue protection of the United States Air Force Beaver Creek Research Site in Alaska which would otherwise expire on January 10, 2009.

EFFECTIVE DATE: January 11, 2009.

FOR FURTHER INFORMATION CONTACT: Terrie Evarts, Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504; or 907–271–5630.

SUPPLEMENTARY INFORMATION: The withdrawal extended by this order will expire January 10, 2029, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines

that the withdrawal shall be further extended.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 6705, (54 FR 978–979 (1989)), which withdrew approximately 3,630 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2), and from leasing under the mineral leasing laws, to protect the United States Air Force Beaver Creek Research Site, is hereby extended for an additional 20-year period until January 10, 2029.

Dated: April 2, 2008.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E8–8201 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(WY–030–1430–ES; WYW–16661 1) Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purposes Act, 44.49 acres of public land in Carbon County, Wyoming. Carbon County proposes to use the land for museum purposes.

DATES: Comments must be received by June 2, 2008.

ADDRESSES: Comments should be sent to the BLM, Rawlins Field Office, 1300 North 31 Street, Rawlins, Wyoming 82301, ATTN: Diane Schurman. Detailed information concerning this action, including appropriate environmental documentation, is available for review at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Schurman, Realty Specialist, at the above address or at (307) 328–4261.

SUPPLEMENTARY INFORMATION: In response to an application from the Carbon County Commissioners, Wyoming, the following public lands have been examined and found suitable for classification for lease and/or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*)

Sixth Principal Meridian, Carbon County, Wyoming

North Parcel

"A track of land in the NW¼ of Sec. 20, T21N, R87W, Carbon County, Wyoming, more complete described as follows:

Beginning at a point on the West line of said Sec. 20 which is the Southerly property line of the Union Pacific Railroad and which bears S0°02′21″W, 1198.51 ft. from the Northwest corner of said Sec. 20, monumented with a triangular concrete monument sticking approximately 36 inches out of the ground;

Thence S0°02′21″W, 89.57 ft. along the West line of said Sec. 20 to the Northeasterly right-of-way line of Interstate 80, a non tangent curve concave northeasterly;

Thence along said right-of-way on a curve to the left an arc distance of 1166.72 ft. on a radius of 5559.33 ft. to a point on the Northwesterly right-of-way of Wyoming Highway 71;

Thence N55°46′10″E, 424.12 ft. along the Highway 71 right-of-way, to the beginning of a tangent curve to the right concave South;

Thence along said curve an arch distance of 823.04 ft. on a radius of 537.45 ft. through a central angle of 87°44′31″, a chord bearing and distance of S81°11′11″E, 744.95 ft., to the beginning of a non tangent curve to the left, concave Westerly on the West line of a connector road;

Thence along the Westerly line of said connector road and said curve an arc distance of 62.01 ft. on a radius of 240.0 ft. through a central angle of 14°48′16″, a chord bearing and distance of N24°22′06″E, 61.84 ft., to a point;

Thence along said Westerly line of said connector road N9°47′40″E, 229.38 ft. to a point on the South line of the NE¼NW¼ of said Sec. 20;

Thence N89°51′26″W, 903.56 ft. along the South line of said NE¼NW¼ to the Southwest corner of said NE¼NW¼, the Northwest 1/16 corner of said Sec. 20;

Thence N0°04′47″W, 1081.01 ft. along the West line of said NE¼NW¼ to a point on the South right-of-way line of the Union Pacific Railroad;

Thence S73°38′07″W, 527.84 ft. along the said South right of way line to a point;

Thence S45°19′21″W, 1147.55 ft. along the said South right-of-way line to the point of beginning, said tract containing 31.43 acres, more or less."

South Parcel

"A tract of land in the SWY4NWY4 of Sec 20, T21N, R87W, Carbon County, Wyoming, more completely described as follows:

Beginning at the West quarter corner of said Sec. 20;

Thence S89°50′57″E, 1326.80 ft. along the East/West centerline of said Sec. 20 to the Southeast corner of the SW¼NW¼, (the Center West 1/16 corner of said Sec. 20);

Thence N0°04′47″W, 433.35 ft., more or less, to a point on the Southerly right-of way of Interstate 80 on a non tangent curve, concave Northeasterly;

Thence along said curve to the right an arch distance of 403.47 ft. on a radius of 5959.33 ft. through a central angle of 3°52′45″, a chord bearing and distance of N75°12′40″W, 403.40 ft. to a point on the Southerly right-of-way of said Highway 71;

Thence S74°45′20″W, 970.09 ft. along the Southerly right-of-way of said Highway 71 to a point on the West line of said Sec. 20;

Thence S0°02′21″W, 277.81 ft. along the West line of said Sec. 20 to the point of beginning, said tract containing 13.06 acres, more or less."

The area described contains 44.49 acres more or less.

The lands are not needed for Federal purposes. Lease and/or conveyance is consistent with current Bureau land-use planning and would be in the public interest. The patent, if issued, will be subject to the following reservations, terms, and conditions:

(1) Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

(2) Provided that title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its approved successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, or the lands have not been used for the purpose for which the lands were conveyed for a 5-year period, or the patentee has failed to follow the approved development plan or management plan.

(3) Provided further that the Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits its agents, employees, contractors, or subcontractors (including without limitation lessees, sub-lessees, and permittees) to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex, national origin, or handicap.

(4) If, at any time, the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvements thereon.

(5) A right-of-way thereon for ditches and canals constructed by authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

(6) A reservation of all mineral deposits in the land so patented, and the right of the United States, or persons authorized by the United States, to prospect for, mine, and remove such deposits from the same under applicable laws and regulations as the Secretary of the Interior may prescribe.

(7) Any other valid and existing rights and encumbrances of record.

(8) Such other provisions as may be required by law, including compliance with the terms or provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 241).

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the application, or 18 months from the date of this notice, whichever occurs first.

Classification Comments: Interested parties may submit comments involving the suitability of the land for museum purposes. Comments on the classification are restricted to whether the land is physically suited for the proposed use, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development and management, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposed use.

For a period until June 2, 2008, interested parties and the general public may submit in writing any comments concerning the land being considered for lease/conveyance, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM Rawlins Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed lease/sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments transmitted via e-mail will not be accepted.

Any objections will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, regarding this realty action, it will become the final determination of the Department of the Interior. In the absence of any adverse comments, regarding the classification action, it will become effective June 16, 2008.

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 2741.4(h)(1)–(4))

Dated: March 24, 2008.

Patrick Madigan,

Rawlins Field Manager.

[FR Doc. E8–8023 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

National Park Service

Elk and Vegetation Management Plan, Final Environmental Impact Statement, Rocky Mountain National Park, CO

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the Elk and Vegetation Management Plan, Rocky Mountain National Park

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Elk and Vegetation Management Plan, Rocky Mountain National Park, Colorado. On February 15, 2008, the Regional Director, Intermountain Region, approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on January 4, 2008. The Final Plan analyzed five alternatives, including a no action alternative (Alternative 1), to manage elk and vegetation within the Park. The four action alternatives each used different combinations of management tools to reduce the elk population size and densities, redistribute elk, restore natural migration, and restore vegetation. All action alternatives emphasized adaptive management. Alternative 2 used intensive lethal reduction (culling) of elk in the first four years of the plan to reach a population size on the low end of the natural range of variation, in combination with minimal fencing. Alternative 4 used a fertility control agent along with gradual lethal reduction (culling) of elk over the 20 year life of the plan to reach a population size on the high end of the natural range of variation, in combination with a moderate amount of fencing. Alternative 5 used introduction of a small number of intensively managed wolves, along with intensive lethal reduction (culling) of elk in the first four years of the plan to reach a population size that incorporated the full range of natural variation, in combination with minimal fencing.

The selected action, Alternative 3, relies on a variety of conservation tools including fencing, redistribution, vegetation restoration and lethal reduction (culling). In future years, the park will, using adaptive management principles, reevaluate opportunities to use wolves or fertility control as additional tools. The selected alternative includes the gradual lethal reduction (culling) of elk by National Park Service staff and authorized agents of the National Park Service to achieve an elk population size at the high end of the natural range of variation of 1,600 to 2,100 elk (600 to 800 park subpopulation; 1,000 to 1,300 town subpopulation) by the end of the plan. Inside the park, up to 200 elk will be removed annually over 20 years. To the extent possible, elk carcasses and/or meat resulting from these actions will be donated through an organized program to eligible recipients, including tribes, based on informed consent and pursuant to applicable public health guidelines. Aspen stands (up to 160 acres) on the elk range will be fenced to exclude elk herbivory. Because this alternative will result in a target population at the high end of the natural range, up to 440 acres of suitable willow habitat will be fenced in the high elk-use areas of the primary summer and winter ranges. These temporary fences will be installed adaptively, based on vegetation response to elk management actions as indicated through a monitoring program. To reduce elk densities on the elk range outside of fenced areas, redistribution of the population will occur using herding, aversive conditioning, and use of unsuppressed weapons for culling. The plan incorporates adaptive management and monitoring to determine the level and intensity of management actions needed, including elk population reductions, fencing, herding, and aversive conditioning. Population numbers will be estimated annually and the number of animals to be removed will be determined based on the most current population estimates. If the elk population is within the defined portion of the range of natural variation and vegetation management objectives are being met, no lethal reduction activities will take place. Culling will be administered by the National Park Service and carried out by National Park Service personnel and their authorized agents. For purposes of this plan, "authorized agents" can include: Professional staff from other federal, state, or local agencies or tribes; contractors; or qualified volunteers.

For all alternatives the full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally

preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Therese Johnson, 1000 Highway 36, Rocky Mountain National Park, Estes Park, Colorado 80517, 303–772–5474, *therese_johnson@nps.gov*.

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *http://parkplanning.nps.gov/romo*.

Dated: April 3, 2008.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E8–8116 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–08–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan and Environmental Impact Statement, Gila Cliff Dwellings National Monument, NM

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the general management plan for Gila Cliff Dwellings National Monument.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C), the National Park Service is preparing an environmental impact statement for a general management plan for Gila Cliff Dwellings National Monument, New Mexico. The environmental impact statement will be approved by the Director, Intermountain Region.

The general management plan will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the monument over the next 15 to 20 years. The clarification of what must be achieved according to law and policy will be based on review of the monument's purpose, significance, special mandates, and the body of laws and policies directing park management. Based on determinations of desired conditions, the general management plan will outline the kinds of resource management activities, visitor activities, and development that would be appropriate in the future. A range of reasonable management alternatives will be developed through this planning process and will include, at a minimum, no-action and the preferred alternative.

The monument does not have a general management plan as required by the Redwood Amendment of 1978 and NPS management policies.

Issues to be addressed will include but are not limited to the following: The protection and interpretation options for the cliff dwellings and TJ Ruin and long-term direction for protection and management. The needs of all users (cultural heritage visitors, wilderness hikers, nature watchers, and Native Americans) and the appropriateness and adequacy of current facilities. Identifying and analyzing various options for long-term management of the monument, adjacent land, and facilities.

DATES: Any comments on the scope of issues to be addressed in the plan should be submitted no later than 30 days after publication of this notice. Public meetings regarding the general management plan will be held during the scoping period. Specific dates, times, and locations will be made available in the local media, on the National Park Service Planning, Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/gicl*), or by contacting the Superintendent of Gila Cliff Dwellings National Monument.

ADDRESSES: Information on the planning process and copies of newsletters will be available from the office of the Superintendent, HC 68 Box 100, Silver City, NM 88061–0100.

FOR FURTHER INFORMATION CONTACT: Superintendent Steve Riley, Gila Cliff Dwellings National Monument, HC 68 Box 100, Silver City, NM 88061–0100; phone: (505) 536–9461.

SUPPLEMENTARY INFORMATION: Public and agency involvement will be solicited at several key steps in the planning process including initial scoping, alternatives development, and the draft plan.

If you wish to comment on any issues associated with the plan, you may submit your comments to the planning team by any one of several methods. You may mail comments to Gila Cliff Dwellings National Monument, HC 68 Box 100, Silver City, NM 88061–0100. You may also comment electronically at *http://parkplanning.nps.gov/gicl*. Finally, you may hand-deliver comments to the monument headquarters located forty-four miles north of Silver City, New Mexico, on NM Road 15. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Dated: April 2, 2008.

Michael D. Snyder,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. E8–8134 Filed 4–15–08; 8:45 am]

BILLING CODE 4312–FA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft General Management Plan/Environmental Impact Statement/Wilderness Study for Sleeping Bear Dunes National Lakeshore.

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Draft General Management Plan/ Environmental Impact Statement/ Wilderness Study for Sleeping Bear Dunes National Lakeshore.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(c), the National Park Service (NPS) announces the availability of a draft General Management Plan/Environmental Impact Statement/Wilderness Study (GMP/EIS/WS) for Sleeping Bear Dunes National Lakeshore, Michigan.

DATES: The draft GMP/EIS/WS will remain available for public review for 45 days following the publishing of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency. Public meetings will be held during the 45-day review period on the GMP/EIS/WS in Benzie, Lelanau, and Grand Traverse Counties, Michigan, in early summer 2008. In concert with one of the public meetings, a hearing on the wilderness study will be conducted consistent with Section 3(d)(1) of the Wilderness Act. Specific dates and locations will be announced in local and regional media sources of record and on the national lakeshore's Web site.

You may submit your comments by any one of several methods. You may comment via the Internet through the national lakeshore's Web site at *http://www.nps.gov/slbe*; simply click on the GMP page. You may also comment via the Internet through the NPS Planning, Environment, and Public Comment Web

site (*http://parkplanning.nps.gov*); simply click on the link to Sleeping Bear Dunes National Lakeshore. You may mail comments to Superintendent Shultz, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630–9797. You may contact the Superintendent by facsimile at 231–326–5382. Finally, you may hand-deliver comments to the Sleeping Bear Dunes National Lakeshore headquarters at the address above.

ADDRESSES: Copies of the draft GMP/EIS/WS are available from the Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630–9797.

SUPPLEMENTARY INFORMATION: This GMP/EIS/WS will guide the management of the Sleeping Bear Dunes National Lakeshore for the next 25 years. The draft GMP/EIS/WS considers five draft conceptual alternatives—a no-action and four action alternatives, including the NPS preferred alternative. The draft GMP/EIS/WS assesses impacts to a variety of natural resources, a variety of cultural resources, visitor opportunities and use, wilderness character, socioeconomics, and NPS operations.

The NPS preferred alternative manages the national lakeshore primarily for preservation of its natural resources and for the opportunities it provides for visitor enjoyment of the natural, cultural and recreational resources in scenic outdoor settings. In addition, the Wilderness Act, the enabling legislation for the national lakeshore, and the NPS management policies require that all lands administered by the NPS at the national lakeshore be evaluated for their suitability for inclusion within the national wilderness preservation system. The purpose of the wilderness study, incorporated into the GMP/EIS is to determine if and where lands and waters within the national lakeshore should be proposed for wilderness designation. The study identifies possible wilderness configurations within the park and evaluates their effects. The NPS preferred alternative proposes 32,200 acres for wilderness designation. Based on the findings of this study, a formal wilderness proposal will be submitted to the Director of the NPS for approval and subsequent consideration by the U.S. Department of the Interior, the President of the United States, and Congress under the provisions of the Wilderness Act.

FOR FURTHER INFORMATION CONTACT: Superintendent Shultz, Sleeping Bear Dunes National Lakeshore, at the address or telephone number above.

Before including your address, telephone number, electronic mail address, or other personal identifying information in your comments, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 12, 2008.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. E8–7983 Filed 4–15–08; 8:45 am]

BILLING CODE 4310–HH–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Management Action Plan/ Environmental Impact Statement; Record of Decision; National Coal Heritage Area, West Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Record of Decision for the Final Management Action Plan/ Environmental Impact Statement, National Coal Heritage Area.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the Final Management Action Plan and Environmental Impact Statement (Final MAP/EIS) for the National Coal Heritage Area in West Virginia. The Regional Director, Northeast Region, approved the Record of Decision for the project, selecting Alternative C-Focal Point with Corridor Development, which was described on pages II–1 to II–11 of the Final MAP/EIS and announced to the public in a Notice of Availability published in the **Federal Register** on September 23, 2002.

The selected alternative, and three additional alternatives including Alternative D, the No-Action Alternative, were analyzed in the Draft and Final Environmental Impact Statements. Each alternative was evaluated as to how it would guide the priorities, projects, and management of the national heritage area over the following ten years. Management approach, funding sources, and education, preservation, conservation and interpretation opportunities and priorities were all considered during the analysis, as were marketing and tourism opportunities and priorities and the development of physical components including visitor centers, destination centers, a museum, and access corridors. The full range of foreseeable environmental consequences was assessed and disclosed in relation to impacts on historic, cultural, natural and recreational resources, the environment, and the quality of the visitor experience.

The NPS will implement Alternative C, the preferred alternative (the selected action), as described in the *National Coal Heritage Area Management Action Plan/Environmental Impact Statement* for the National Coal Heritage Area because it best reflects and fulfills the goals of the National Coal Heritage Area's mission, as well as the purpose and intent of the National Coal Heritage Area's enabling legislation. The selected alternative is based on a combined focal point/corridor development approach and is a hybrid of Alternatives A and B, which were also evaluated in the *National Coal Heritage Area Management Action Plan/ Environmental Impact Statement*. The selected alterantive includes the nine Destination Centers and Experience Zones proposed in Alternative A and the development of a large-scale, state-of-the-art interpretive and educational museum/visitor center complex near Beckley proposed in Alternative B. The selected alternative is estimated to cost approximately $78 million over a 10-year period.

The NPS has selected Alternative C for implementation because it best meets the legislative intent of the National Coal Heritage Area Act to "develop and implement integrated cultural, historical, and land resource management policies and programs to retain, enhance, and interpret significant values of the lands, water, and structures of the Area." The Selected Alternative captures a broad range of visitors and encourages local capacity building simultaneously. It gives visitors several options for exploring the 11-county heritage area with a large interpretive center, several Visitor Centers and nine Destination Centers. The Selected Alternative provides for strong central leadership that would take an active role in the development of a broad-based preservation and conservation effort that

is likely to result in increased investment in the NCHA and increased business and employment opportunities.

The Record of Decision includes a background of the project, statement of the decision made, synopses of alternatives considered, the basis for the decision, a finding of no impairment of resources and values, and an overview of public and agency involvement in the decision-making process. This decision is the result of a public planning process that began with public outreach meetings in February and March 2000, and the publication of a Notice of Intent to prepare an Environmental Impact Statement for the National Coal Heritage Area Management Action Plan in the **Federal Register** on July 17, 2001. The official responsible for this decision is the NPS Regional Director, Northeast Region.

ADDRESSES: The Record of Decision for the Final MAP/EIS for the National Coal Heritage Area is available online at *http://www.coalheritage.org* or *http://www.planning.nps.gov/plans.cfm.* Copies may be obtained by contacting the Executive Director, National Coal Heritage Area, P.O. Box 5176, Beckley, WV 25801.

FOR FURTHER INFORMATION CONTACT: Christy Bailey, Executive Director, National Coal Heritage Area, P.O. Box 5176, Beckley, WV 25801, phone (304) 256–6941, *ccbailey@ntelos.net.*

SUPPLEMENTARY INFORMATION: The *National Coal Heritage Area Act* (Pub. L. 104–333; 110 Stat. 4243), enacted on November 12, 1996, authorized the National Coal Heritage Area "for the purpose of preserving and interpreting for the educational and inspirational benefit of present and future generations certain lands and structures with unique and significant historic and cultural value associated with the coal mining heritage of the State of West Virginia and the Nation." This legislation charged the Governor of the State of West Virginia with developing and implementing a management plan to "set forth the integrated cultural, historical, and land resource management policies and programs * * * describe the guidelines and standard for projects * * * and set forth the responsibilities o the State of West Virginia, units of local government, nonprofit entities, or Secretary to administer any properties acquired" for the purposes of implementing the act. In 2006, Pub. L. 109–338 recognized the National Coal Heritage Area Authority as the new management entity and expanded the Heritage Area's boundaries.

The National Coal Heritage Area Authority has put forward a management plan and EIS after many years of public meetings and partnership-building activities with state and local governments, nonprofit organizations and corporations, and residents to develop an implementation and action plan outlining the priority activities and actions, estimated costs, and intended goals of the National Coal Heritage Area management entity and its partners. Proposed projects are organized into four distinct phases, which build upon the approach described in the selected alternative. The activities and actions described demonstrate a commitment by Heritage Area partners to collaborate on initiatives that use culture and heritage to integrate the region and foster economic development.

Dated: February 22, 2008.

Dennis R. Reidenbach,

Regional Director, Northeast Region, National Park Service.

[FR Doc. E8–8136 Filed 4–15–08; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 29, 2008. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 1, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

CALIFORNIA

Los Angeles County

Grey, Zane, House on Catalina Island, 199 Chimes Tower Rd., Avalon, Q8000371

HAWAII

Honolulu County

Kaumakapili Church, 766 N. King St., Honolulu, 08000372

Tantalus—Round Top Road, Tantalus Dr., Round Top Dr., Honolulu, 08000373

IOWA

Fayette County

Elgin Block, The, 225–231 Center St., Elgin, 08000374

MISSOURI

Boone County

Downtown Columbia Historic District (Boundary Increase), (Downtown Columbia, Missouri MPS) 1019, 1020, 1023 & 1025–33 E. Walnut St., Columbia, 08000375

Lewis County

Hipkins, Joseph, House, (La Grange, Missouri MPS) 500 S. 3rd St., La Grange, 08000376

St. Louis Independent city

Franke Motor Company Building, (Auto-Related Resources of St. Louis, Missouri MPS) 1395–7 Hamilton Ave., St. Louis (Independent City), 08000377

NORTH CAROLINA

Catawba County

Harris Arcade, 221–229 1st Ave. NW., Hickory, 08000378

Forsyth County

Centerville Historic District, Roughly bounded by Waughtown, Vargrave, Haled & Chapel Sts., Winston-Salem, 08000379

Sunnyside—Central Terrace Historic District, Roughly bounded by Haled, Junia, Monmouth, Glendale, Goldfloss, Brookline & Main Sts., Winston-Salem, 08000380

Mecklenburg County

Alexander, Neal Somers, House, (Rural Mecklenburg County MPS) 5014 N. Sharon Amity Rd., Charlotte, 08000381

New Hanover County

Gabriel's Landing, 1005 Airlie Rd., Wilmington, 08000382

UTAH

Carbon County

Price Main Street, 100 W. to approx. 215 E. Main St., Price, 08000383

Sanpete County

Manti Motor Company Building, 87 N. Main St., Manti, 08000384

Utah County

Timpanogos Cooperative Marketing Association Building, (Orem, Utah MPS) 380 S. Orem Blvd., Orem, 08000385

VERMONT

Windham County

Corse—Shippee House, 11 Dorr Fitch Rd., Dover, 08000386

VIRGINIA

Gloucester County

Quest End, 5488 & 5476 Roanes Wharf Rd., Selden, 08000387

Halifax County

Evans, E.L., House, 1204 Washington Ave., South Boston, 08000388

Lunenburg County

Bechelbronn, 1223 Rubermont Rd., Victoria, 08000389

Middlesex County

Sandwich, 131 Virginia St., Urbanna, 08000390

Newport News Independent city

Endview Plantation, 362 Yorktown Rd., Newport News (Independent City), 08000391

WEST VIRGINIA

Barbour County

Laurel Hill Battlefield—Union Fortifications—Right Cemetery, Co. Rd. 15, portjons of Judson, Serpell & Ward Sts., Belington, 08000393

Kanawha County

Elk City Historic District, Portions of Bigley Ave., Jarrett Ct., Lee St., Maryland, Ohio & Pennsylvania Aves. & W. Washington St., Charleston, 08000392

A request to MOVE has been made for the following resource:

SOUTH DAKOTA

Madison, Pap, Cabin, 222 New York St., Rapid City, 08000054

[FR Doc. E8–8094 Filed 4–15–08; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act Of 1993—Telemanagement Forum

Notice is hereby given that, on February 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"), TeleManagement Forum ("the Forum") 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, Applied Broadband, Inc., Boulder, CO; Architecting-theEnterprise, High Wycombe, Buckinghamshire, UNITED KINGDOM; ANGELA Technologies, Istanbul, TURKEY; Arismore, Saint-Cloud Cedex, FRANCE; Astellia, Vern sur Seiche Cedex, FRANCE; Avistas, Irving, TX; BIue River Management (Pty) Ltd; Bryanston, Gauteng, SOUTH AFRICA; Brix Networks, Chelmsford, MA; BSK Consulting GmbH, Dietzenbach, GERMANY; BTG, Driebergen, NETHERLANDS; Cablecom GmbH, Zurich, SWITZERLAND; Cellex Networks Systems (2007) Ltd, Bne Braq, ISRAEL; Centina Systems, Inc., Richardson, TX; Comservice Networks Pty Ltd, Melbourne, Victoria, AUSTRALIA; Conexion SA, Asunción, PARAGUAY; Cordys Inc., San Jose, CA; CRC-Pinnacle Consulting Co., Ltd, Beijing, PEOPLE'S REPUBLIC OF CHINA; Customer One Solutions, Inc., Cornelius, NC; CYPRUS TELECOMMUNICATIONS AUTHORITY (CYTA), Nicosia, CYPRUS; Dataupia, Cambridge, MA; Defence Science & Technology Agency, Singapore, SINGAPORE; Dynamic Design Ltd, Wels, AUSTRIA; Elders Telecommunications Pty Ltd, Adelaide, South Australia, AUSTRALIA; eServGlobal SAS, Malakov, Paris, FRANCE; Everware-CBDI Inc., Fairfax, VA; FBBT, Belfast, County Antrim, IRELAND; Fernbrook Services, Montrose, Victoria, AUSTRALIA; Fiberhome Telecommunication Technologies Co. Ltd, Wuhan, HuBei, PEOPLE'S REPUBLIC OF CHINA; Gartner, Stamford, CT; GIP AG, Mainz, GERMANY; globeOSS, Shah Alam, Selangor, MALAYSIA; Gurulab.org, Caracas, Miranda, VENEZUELA; Hisashi Tada, Setagaya, Tokyo, JAPAN; Hitachi Software Engineering Co., Ltd, Shinagawa-ku, Tokyo, JAPAN; Hitachi Telecom, Norcross, GA; i3Services, Ltd, St. Petersburg, RUSSIA; Inca Informatics Pvt. Ltd (INCA), Noida, Uttar Pradesh, INDIA; InIine Telecom Solutions, Moscow, RUSSIA; International Engineering Consortium, Chicago, IL; Keste, LLC, Piano, TX; Letograf, Moscow, RUSSIA; Liberty Cablevision of Puerto Rico Ltd, Luguillo, PUERTO RICO; Liberty Global Inc., Englewood, CO; Lyse Tele AS, Stavanger, NORWAY; MAGNA CONSULT, Miami, FL; MegaFon JSC, Moscow, RUSSIA; MOBIK d.o.o., Ljubljana, SLOVENIA; MTS Alistream Inc., Winnipeg, Manitoba, CANADA; Narus, Inc., Mountain View, CA; NetAge Solutions GmbH, Muenchen, GERMANY; Nomos Software, Cork, IRELAND; Nordisk Mobíltelefon Sverige AB, Tby, Stockholm, SWEDEN; Northwestel Inc., Whitehorse, Yukon, CANADA; 02 (Germany) GmbH, Munich, Bavaria, GERMANY; 02 (Ireland), Dublin, IRELAND; O2UK, Slough, Berkshire, UNITED KINDGOM; Objective Systems Integrators, Rosevilie, CA; Optima Soft, Korolev, RUSSIA; OSSEra, Inc. 1, Davis, CA; PEAK8 SOLUTIONS, Boulder, CO; PETER-SERVICE, St. Petersburg, RUSSIA; PricewaterhouseCoopers LLP, London, UNITED KINGDOM; QATAR TELECOM (Qtel), Doha, QATAR; Real Time Engineering Limited, Glasgow, Lanarkshire, UNITED KINGDOM; Reliance Communications Limited, Navi Mumbai, Maharashtra, INDIA; Ronanki Infotech Private Ltd, Bangalore, Karnataka, INDIA; RTC ARGUS, St. Petersburg, RUSSIA; Servista Ltd, London, UNITED KINGDOM; SevenTest R&D Centre Co., Ltd, St. Petersburg, RUSSIA; Siemens AG, Vienna, AUSTRIA; SK Telecom Co. Ltd. Jung-gu, Seoul, REPUBLIC OF KOREA; Strata Group Inc., St. Louis, MO; Sunrise Telecom Sri., Modena, ITALY; Telecom Egypt, Giza, EGYPT; Telecominvest, Kyiv, UKRAINE; TeIeSciences, Inc., Mount Laurel, NJ; Telesoft-Russia, Moscow, RUSSIA; The OpenNMS Group, Inc., Pittsboro, NC; TracAutomation Systems Inc., St-Laurent, Quebec, CANADA; Turk Telekomünikasyon A.S., Ankara, TURKEY; University of Bonn, GERMANY; University of Otago, Dunedin, Otago, NEW ZEALAND; Venteio Bedrift AS, Oslo, NORWAY; VTR GlobalCom S.A., Santiago, Region Metropolitana, CHILE; Westwood One/Metro Networks, New York, NY; Xalted Information Systems Pvt Ltd, Bangalore, Karnataka, INDIA; XO Communications, Reston, VA; and ZAO RENOVA-MEDIA Enterprises Ltd, Moscow, RUSSIA have been added as parties to this venture.

Also, 24 Online Oy, Espoo, FINLAND; ADVA Optical Networking Inc., Mahwah, NJ; AdvancedVOIP. com, Islamabad, PAKISTAN; ArtinSoft LLC, Herndon, VA; Casabyte, Inc., Renton, WA; CellC, Johannesburg, Gauteng, SOUTH AFRICA; CIML Inc., Montreal, Quebec, CANADA; COLT Telecom Group plc, London, UNITED KINGDOM; CSG Systems Inc., Englewood, CO; DynamicCity, Lindon, UT; Evolved Networks, Ipswich, Suffolk, UNITED KINGDOM; Fortinet, Inc., Sunnyvale, CA; Globetom, Highveld, Centurion, SOUTH AFRICA; InterSystems, Eton, Windsor, UNITED KINGDOM; IPDR.org, Friday Harbor, WA; Jernbaneverket/ITN, Hamar, NORWAY; José Ricardo Formagio Bueno, Campinas, Sao Paulo, BRAZIL; Leapstone Systems, Somerset, NJ; Logan-Orviss International, Valbonne, FRANCE; Mermarsat Limited, Harpenden, UNITED KINGDOM; Metrocom Inc., Miami, FL; Millennium Information Technologies Ltd,

Kaduwela, Western, SRI LANKA; Netsure Telecom Ltd. Dublin 12, Leinster, IRELAND; Northrop Grumman, Los Angeles, CA; OKB Telecom, Moscow, RUSSIA; OperTune Ltd. Oxford, Oxfordshire, UNITED KINGDOM; OSS Terrace, Cupertino, CA; OT/partners, Glen Echo, MD; Raavi Consulting Services, Hyderabad, Andhra Pradesh, INDIA; S2Net, Melbourne, Victoria, AUSTRALIA; Sigos GmbH, Nurnberg, GERMANY; Simpler Networks, Inc., Dorval, Quebec, CANADA; telconvergence GmbH, Olching, GERMANY; Telecommunications Division, Sacramento, CA; Tiscali International Network, Utrecht, NETHERLANDS; TMNG, Hilton Head Island, SC; Toyo Business Engineering Corp., Narashino, Chiba, JAPAN; Virgin Media, Hook, Hampshire, UNITED KINGDOM; Virgin Mobile, Trowbridge, Wiltshire, UNITED KINGDOM; WeDo Technologies, Lisbon, PORTUGAL; Wireless Maingate Nordic AB, Karlskrona, SWEDEN and World Wide Packets, Veradale, WA, have withdrawn as parties to this venture.

The following members have changed their names: Graftor Media Production Oy to AinaCom Oy; Amdocs to Arndocs Systems Europe Limited; Cellex to Cellex Networks System Ltd; Concept Wave Software to ConceptWave Software; Cordys Inc to Cordys Inc.; Ernst & Young (CIS) E.V. to Ernest & Young Global Telecom Center; Fastwire Pte Ltd to Fastwire; Personal to Hisashi Tada; Jacobs Rimell to JacobsRimell; Kabira Technology to Kabira Technologies; LHS to LHS Telekommunikation GmbH & Co.; Orishatech to OT/Partners; Pricewaterhouse Coopers UK to PricewaterhouseCoopers LLP; PSI AG to PSI Transcom GmbH; Ronannki Infotech Private Ltd to Ronanki Infotech Private Ltd; <<SevenTest R&D Centre>> Co. Ltd to SevenTest R&D Centre Co. Ltd; SITRONICS Telecom Solutions to SITRONICS TS, CZ; Avici Systems Inc. to Soapstone Networks; Tele Design Servicos E Comércio De Telecomunicoes to Teleconex Comércio e Services em Tel Campinas; Telconex Comércio e Servicios em Telecommunicoes LTDA ME to Teleconex Comércio e Services em Tel Campinas; TeleManagement Forum to TM Forum; Praesidium Services Ltd to WeDo Technologies; Westwood One, Inc., to Westwood One/Metro Networks and TIM Hellas to Wind Hellas Telecommunications SA.

The following members have changed their addresses: AinaCom Oy to Hämeenlinna, FINLAND; Atos Origin to Paris La Defense Cedex, Paris, FRANCE; Digital Fairway Corporation to Toronto, Ontario, CANADA; FBBT to Belfast, County Antrim, IRELAND; LHS Telekommunikation GmbH & Co. KG to 60528 Frankfurt am Main, GERMANY; Reliance Communications Limited to Navi Mumbai, Maharashtra, INDIA; Revenue Protect Limited to Hatfield, Hertfordshire, UNITED KINGDOM; SaskTel to Regina, Saskatchewan, CANADA; Softline to Kiev, UKRAINE; Telephone and Data Systems, Inc. to Chicago, IL; Teistra Corporation to Melbourne, Victoria, AUSTRALIA and TrueBaseline Corporation to Pittsburgh, PA.

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 the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum 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 December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on August 7, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 7, 2007 (72 FR 62869)

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–7981 Filed 4–15–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on March 14, 2008, Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexy]piperidine (7470)	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (7473)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661)	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4,5-Trimethoxyamphetamine (7390)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxymethamphetamine (7405)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3-Methylfentanyl (9813)	I
3-Methylthiofentanyl (9833)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
4-Methylaminorex (cis isomer) (1590)	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	I

Drug	Schedule
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
Acetorphine (9319)	I
Acetyl-alpha-methylfentanyl (9815)	I
Acetyldihydrocodeine (9051)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603)	I
Alpha-ethyltryptamine (7249)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Alpha-methylfentanyl (9814)	I
Alpha-methylthiofentanyl (9832)	I
Alpha-methyltryptamine (7432)	I
Aminorex (1585)	I
Benzethidine (9606)	I
Benzylmorphine (9052)	I
Betacetylmethadol (9607)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Beta-hydroxyfentanyl (9830)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Bufotenine (7433)	I
Cathinone (1235)	I
Clonitazene (9612)	I
Codeine methylbromide (9070)	I
Codeine-N-Oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Diethyltryptamine (7434)	I
Difenoxin (9168)	I
Dihydromorphine (9145)	I
Dimenoxadol (9617)	I
Dimepheptanol (9618)	I
Dimethylthiambutene (9619)	I
Dimethyltryptamine (7435)	I
Dioxaphetyl butyrate (9621)	I
Dipipanone (9622)	I
Drotebanol (9335)	I
Ethylmethylthiambutene (9623)	I
Etonitazene (9624)	I
Etorphine except HCl (9056)	I
Etoxeridine (9625)	I
Fenethylline (1503)	I
Furethidine (9626)	I
Gamma Hydroxybutyric Acid (2010)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Hydroxypethidine (9627)	I
Ibogaine (7260)	I
Ketobemidone (9628)	I
Levomoramide (9629)	I
Levophenacylmorphan (9631)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Mecloqualone (2572)	I
Mescaline (7381)	I
Methaqualone (2565)	I
Methcathinone (1237)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morpheridine (9632)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Morphine-N-Oxide (9307)	I
Myrophine (9308)	I
N,N-Dimethylamphetamine (1480)	I
N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (9834)	I
N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (9818)	I
N-Benzylpiperazine (7493)	I
N-Ethyl-3-piperidyl benzilate (7482)	I

Drug	Schedule
N-Ethylamphetamine (1475)	I
N-Ethyl-I-phenylcyclohexylamine (7455)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
N-Methyl-3-piperidyl benzilate (7484)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Normorphine (9313)	I
Norpipanone (9636)	I
Para-Fluorofentanyl (9812)	I
Parahexyl (7374)	I
Peyote (7415)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenomorphan (9647)	I
Phenoperidine (9641)	I
Pholcodine (9314)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Propiram (9649)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Racemoramide (9645)	I
Tetrahydrocannabinols (7370)	I
Thebacon (9315)	I
Thiofentanyl (9835)	I
Tilidine (9750)	I
Trimeperidine (9646)	I
1-Phenylcyclohexylamine (7460)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Alfentanil (9737)	II
Alphaprodine (9010)	II
Amobarbital (2125)	II
Amphetamine (1100)	II
Anileridine (9020)	II
Bezitramide (9800)	II
Carfentanil (9743)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Dihydrocodeine (9120)	II
Dihydroetorphine (9334)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Etorphine Hcl (9059)	II
Fentanyl (9801)	II
Glutethimide (2550)	II
Hydrocodone (9193)	II
Hydromorphone (9150)	II
Isomethadone (9226)	II
Levo-alphacetylmethadol (9648)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Lisdexamfetamine (1205)	II
Meperidine (9230)	II
Meperidine intermediate—A (9232)	II
Meperidine intermediate—B (9233)	II
Meperidine intermediate—C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Metopon (9260)	II
Moramide intermediate (9802)	II
Morphine (9300)	II
Nabilone (7379)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, granulated (9640)	II

Drug	Schedule
Oxycodone (9143)	II
Oxymorphone (9652)	II
Pentobarbital (2270)	II
Phenazocine (9715)	II
Phencyclidine (7471)	II
Phenmetrazine (1631)	II
Phenylacetone (8501)	II
Piminodine (9730)	II
Powdered opium (9639)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Remifentanil (9739)	II
Secobarbital (2315)	II
Sufentanil (9740)	II
Thebaine (9333)	II

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse (NIDA) for research activities.

Any bulk manufacturer who is presently, or is applying to be, registered with DEAto manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 16, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 9, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–8177 Filed 4–15–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 14, 2008, Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II

The Institute will manufacture small quantities of cocaine and marihuana derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by the National Institute on Drug Abuse.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 16, 2008.

Dated: April 9, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–8165 Filed 4–15–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 18, 2008, Aldrich Chemical Company Inc., DBA Isotec, 3858 Benner Road, Miamisburg, Ohio 45342–4304, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I

Drug	Schedule
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010)	I
Methaqualone (2565)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603)	I
Normethadone (9635)	I
Norpipanone (9636)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine Intermediate—A (9232)	II
Meperidine Intermediate—B (9233)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene, bulk, (non-dosage forms) (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug testing and analysis.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 16, 2008.

Dated: April 9, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–8176 Filed 4–15–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 5, 2007 and published in the **Federal Register** on November 16, 2007 (72 FR 64681), JFC Technologies, LLC., 100 W. Main Street, Bound Brook, New Jersey 08805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Diphenoxylate (9170), a

basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

By correspondence dated March 19, 2008, the company has requested that Hydrocodone (9193) be removed as a bulk drug manufacturing code for the company.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of JFC Technologies, LLC, to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated JFC Technologies, LLC, to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: April 9, 2008.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E8–8180 Filed 4–15–08; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

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 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the following information collection: FECA Medical Report Forms (CA–16, CA–17, CA–20, CA–1087, CA–1090, CA–1303, CA–1305, CA–1331, CA–1332, QCM Letters, OWCP–5a, OWCP–5b, and OWCP–5c) and Claim for Compensation (CA–7). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 16, 2008.

ADDRESSES: Mr. Steven Andoseh, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0373, fax (202) 693–1451; E-mail *andoseh.steven@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA), (5 U.S.C. 8101, *et seq.*), which provides for the payment of benefits for wage loss and/or permanent impairment arising from work related injury or disease to a scheduled member. The act outlines the elements of pay to be included in an individual's pay rate, and sets forth various other criteria for determining eligibility and amount of benefits, including augmentation of basic compensation for individuals with dependents. The act also requires reports of any earnings during a period for which compensation is claimed, prohibits concurrent receipt of FECA benefits and benefits from the Office of Personnel Management (OPM) and certain Veterans Administration (VA) benefits, and mandates that money collected from a liable third party found responsible for the injury for which compensation has been paid be applied to benefits paid or payable. Medical evidence is required to show that the claimant's disability is causally related to the claimant's federal employment. As each claim ages, there is a continuing need for updated information to support continuing benefits. The FECA Medical Report Forms collect medical information from physicians that are necessary to determine entitlement to benefits under the act. The CA–7, Claim for Compensation requests information from the injured worker regarding pay rate, dependents, earnings, dual benefits, and third party information. This information collection is currently approved for use through October 31, 2008.

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:* The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its statutory responsibility to compensate injured employees under the provisions of the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: FECA Medical Reports, Claim for Compensation.

OMB Number: 1215–0103.

Agency Numbers: CA–7, CA–16, CA–17, CA–20, CA–1087, CA–1090, CA–1303, CA–1305, CA–1331, CA–1332, QCM Letters, OWCP–5a, OWCP–5b, and OWCP–5c.

Affected Public: Individuals or Households; Business or other for-profit; Federal Government.

Form No.	Number of responses	Avg. time per response (hrs)	Burden hours
Burden Estimates:			

Form No.	Number of responses	Avg. time per response (hrs)	Burden hours
CA–7	400	.22	87
Medical Report Forms			
CA–16	124,800	.08	9,984
CA–17	57,600	.08	4,608
CA–20	76,800	.08	6,144
CA–1332	480	.50	240
CA–1090	300	.17	51
CA–1303	3,200	.33	1,056
CA–1305	10	.33	3
CA–1331/CA–1087	250	.08	20
QCM–Letters	1,500	.08	120
OWCP–5a	7,200	.25	1,800
OWCP–5b	1,500	.25	375
OWCP–5c	17,000	.25	4,250
Total: Medical	290,640	.09858	28,651
Total	291,040	.09874	28,738

Total Respondents: 291,040.

Total Annual Responses: 291,040.

Average Time per Response: 5.92 minutes.

Estimated Total Burden Hours: 28,738.

Frequency: As Needed.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $128,058.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 10, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–8114 Filed 4–15–08; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering—(1115).

Date and Time: May 2, 2008, 11 a.m.–6 p.m. (EDT).

Place: The National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Maggie Whiteman, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To discuss strategic priorities in computing. To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Assistant Director. Discussion of research, education, diversity, workforce issues in IT and long-range funding outlook.

Dated: April 10, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–8052 Filed 4–15–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 7, 2008, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 7, 2008, 8:30 a.m. Until 10 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:30 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: April 9, 2008.

Cayetano Santos,

Chief, Reactor Safety Branch.

[FR Doc. E8–8156 Filed 4–15–08; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

April 15, 2008 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 73, Number 69, Page 19267) on April 9, 2008. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., April 15, 2008 in conjunction with OPIC's April 17, 2008 Board of Directors meeting has been cancelled.

Contact Person for Information: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *Connie.Downs@opic.gov.*

Dated: April 14, 2008.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. E8–8304 Filed 4–15–08; 8:45 am]

BILLING CODE 3210–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; New Computer Matching Program Between the Office of Personnel Management and the Office of Workers' Compensation Programs and Department of Labor

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice-computer matching between the Office of Personnel Management and the Department of Labor, Office of Worker's Compensation Programs; correction.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, 54 FR 25818 (June 19, 1989), and OMB Circular No. A–130, "Management of Federal Information Resources" (revised November 28, 2000), the Office of Personnel Management (OPM) is publishing notice of its new computer matching program with the Department of Labor, Office of Workers' Compensation Programs (OWCP).

The Office of Personnel Management inadvertently published a notice document in the **Federal Register** of April 11, 2008 (73 FR 19911) titled, "Privacy Act of 1974; New Computer Matching Program Between the Office of Personnel Management and Social Security Administration." This document replaces that notice.

DATES: OPM will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will begin 30 days after the **Federal Register** notice has been published or 40 days after the date of OPM's submissions of the letters to Congress and OMB, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. Subsequent matches will run until one of the parties advises the other in writing of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comments to Sean Hershey, Chief, Management Information Branch, Office of Personnel Management, Room 4316, 1900 E. Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: James Sparrow on (202) 606–1803.

SUPPLEMENTARY INFORMATION:

A. General

The Privacy Act, as amended (5 U.S.C. 552a), establishes the conditions under which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. The Privacy Act regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency for agencies participating in the matching programs;

(2) Obtain the approval of the match agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching;

(5) Verify match findings before reducing, suspending, termination or denying an individual's benefits or payments.

B. OPM Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of OPM's computer matching programs comply with the requirements of the Privacy Act.

Notice of Computer Matching Program, Office of Personnel Management (OPM) With the Department of Labor, Office of Workers' Compensation Programs (OWCP)

A. Participating Agencies

OPM and DOL/OWCP.

B. Purpose of the Matching Program

The purpose of this agreement is to establish the conditions, safeguards and procedures under which the Department of Labor (DOL), Office of Workers' Compensation Programs (OWCP), will disclose Federal employee compensation benefit data to the Office of Personnel Management (OPM). The disclosure will provide OPM with information necessary to identify individuals receiving prohibited concurrent benefits under the Civil Service Retirement System (CSRS) (5 U.S.C. Chapter 83) or the Federal Employees' Retirement System (FERS) (5 U.S.C. Chapter 84) and the Federal Employees' Compensation Act (FECA) (5 U.S.C. Chapter 81).

C. Authority for Conducting the Matching Program

The authorities for conducting this matching program are sections 8347(m) and 8461(h)(1) of title 5 of the United States Code.

D. Categories of Records and Individuals Covered by the Match

The match will involve the OPM system of records published as OPM/Central–1, Civil Service Retirement and Insurance Records at 64 FR 54930 (Oct. 8, 1999), as amended at 65 FR 25775 (May, 2000) and the Department of Labor system of records published as DOL/GOVT–1, entitled "Office of Workers' Compensation Programs, Federal Employees' Compensation Act File" at 67 FR 16817 (Apr. 8, 2002).

E. Privacy Safeguards and Security

The Privacy Act (5 U.S.C. 552a(o)(1)(G)), requires that each matching agreement specify procedures for ensuring the administrative,

technical and physical security of the records matched and the results of such programs. All Federal agencies are subject to: the Federal Information Security Management Act of 2002 (FISMA), 44 U.S.C. 3541 *et seq.*; related Office of Management and Budget circulars and memorandum (e.g., OMB Circular A–130 and OMB M–06–16); National Institute of Science and Technology (NIST) directives; and the Federal Acquisition Regulations (FAR). These laws, circulars, memoranda directives and regulations include requirements for safeguarding Federal information systems and personally identifiable information used in Federal agency business processes, as well as related reporting requirements. OPM and DOL/OWCP recognize that all laws, circulars, memoranda, directives and regulations relating to the subject of this agreement and published subsequent to the effective date of this agreement must also be implemented if mandated.

FISMA requirements apply to all Federal contractors and organizations or sources that possess or use Federal information, or that operate, use, or have access to Federal information systems on behalf of an agency. OPM will be responsible for oversight and compliance of their contractors and agents. Both OPM and DOL/OWCP reserve the right to conduct onsite inspection to monitor compliance with FISMA regulations.

F. Inclusive Dates of the Match

The matching program shall become effective upon the signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget or 30 days after publication of this notice in the **Federal Register**, whichever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E8–8273 Filed 4–15–08; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request,

Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Comment Request: "Tell Us How We're Doing!"; SEC File No. 270–406; OMB Control No. 3235–0463.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this previously-approved questionnaire to the Office of Management and Budget for approval.

The Commission currently sends the questionnaire to persons who have used the services of the Commission's Office of Investor Education and Advocacy (OIEA). The questionnaire consists mainly of eight (8) questions concerning the quality of services provided by OIEA. Most of the questions can be answered by checking a box on the questionnaire.

The Commission needs the information to evaluate the quality of services provided by OIEA. Supervisory personnel of OIEA use the information collected in assessing staff performance and for determining what improvements or changes should be made in OIEA operations for services provided to investors.

The respondents to the questionnaire are those investors who request assistance or information from OIEA.

The total reporting burden of the questionnaire in 2007 was approximately 142 hours and 45 minutes. This was calculated by multiplying the total number of investors who responded to the questionnaire times how long it is estimated to take to complete the questionnaire (571 respondents × 15 minutes = 142 hours and 45 minutes).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director and Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or send an e-mail to *PRA_mailbox@sec.gov*.

Dated: April 10, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8132 Filed 4–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17a–13, OMB Control No. 3235–0035, SEC File No. 270–27.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of the extension of the previously approved collection of information on the following rule: Rule 17a–13 (17 CFR 240.17a–13) under the Securities Exchange Act of 1934 (15 U.S. C. 78a *et seq.*).

Rule 17a–13(b) (17 CFR 17a–13(b)) generally requires that, at least once each calendar quarter, all registered brokers and dealers physically examine and count all securities held, and that they account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) (17 CFR 240.17a–13(c)) provides that under specified conditions, the securities counts, examination, and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not require filing a report with the Commission, discrepancies between a broker-dealer's records and the securities counts may be required to be reported, for example, as a loss on Form X–17A–5 (17 CFR 248.617), which must be filed with the

Commission under Rule 17a–5 (17 CFR 17a–5). Rule 17a–13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons promptly transmit all funds and securities and hold no customer funds and securities. The Rule also does not apply to certain broker-dealers required to register only because they effect transactions in securities futures products.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealer's ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited, or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and the Self Regulatory Organizations ("SROs") to those firms having problems in their back offices.

Currently, there are approximately 5,700 broker-dealers registered with the Commission. However, given the variability in their businesses, it is difficult to quantify how many hours per year each broker-dealer spends complying with the Rule. As noted, the Rule requires a broker-dealer to account for all securities in its possession. Many broker-dealers hold few, if any, securities; while others hold large quantities. Therefore, the time burden of complying with the Rule will depend on respondent-specific factors, including size, number of customers, and proprietary trading activity. The staff estimates that the average time spent per respondent on the Rule is 100 hours per year. This estimate takes into account the fact that more than half the 5,700 respondents—according to financial reports filed with the Commission—may spend little or no time in complying with the Rule, given that they do not do a public securities business or do not hold inventories of securities. For these reasons, the staff estimates that the total compliance burden per year is 570,000 hours (5,700 respondents × 100 hours/respondent).

The records required to be made by Rule 17a–13 are available only to Commission examination staff, state securities authorities, and the SROs. Subject to the provisions of the Freedom of Information Act (5 U.S.C. 522), and the Commission's rules thereunder (17 CFR 200.80(b)(4)(iii)), the Commission does not generally publish or make available information contained in any reports, summaries, analyses, letters, or memoranda arising out of, in anticipation of, or in connection with an examination or inspection of the books and records of any person or any other investigation.

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 control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: April 9, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8153 Filed 4–15–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57641; File No. SR–Amex–2007–107]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 3 Thereto, Relating to Section 31 Related Fees

April 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 October 2, 2007, the American Stock Exchange, LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Amex. The Amex filed Amendment No. 2 to the proposed rule change on March 19, 2008.[3] The Amex filed Amendment No. 3 to the proposed rule change on April 7, 2008.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Commentary to Rule 393 to allow member firms to voluntarily submit, during a six-month period after the effective date of this rule proposal, funds previously accumulated by the member firms pursuant to Rule 393. In addition, the proposed rule change would allow the Exchange to use accumulated funds to pay its current Section 31 fees or, to the extent of any surplus, offset other Exchange regulatory costs.

The text of the proposed rule change is available at the Amex's principal office, from the Commission's Public Reference Room, and on the Amex's Web site at *http://www.amex.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex 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. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 31 of the Act[5] and Rule 31 thereunder,[6] national securities exchanges and associations (collectively "SROs") are required to pay a transaction fee to the Commission that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, the Amex assesses its clearing and self-clearing members a regulatory fee in accordance with Rule 393, which mirrors Section 31 in both

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Amex previously filed and withdrew Amendment No. 1 to the proposed rule change.

[4] Amendment No. 3 replaces all previous amendments in their entirety. Amendment No. 3 added new effective dates of the proposed rule change and would eliminate non-substantive and extraneous text from proposed Commentary .01 to Rule 393.

[5] 15 U.S.C. 78ee.

[6] 17 CFR 240.31.

scope and amount. Clearing members may in turn seek to charge a fee to their customers or correspondent firms. Any allocation of the fee between a clearing member and its correspondent firm or customer is the responsibility of the clearing member.

Reconciling the amounts reported to the Amex and the amounts collected from the customers historically had been difficult for member firms, causing surpluses to accumulate at some member firms (referred to as "accumulated funds"). These accumulated funds were not remitted to the Amex by certain members, despite the fact that these charges may have been previously identified as "Section 31 Fees" or "SEC Fees" by the firms.[7] In addition, since the Amex uses a "self-reporting" methodology for its members to report and remit amounts payable pursuant to Rule 393, the Amex has and continues to accumulate amounts in excess of the amounts paid by the Amex to the Commission pursuant to Section 31 and Rule 31 ("Exchange accumulated funds").

In November 2004, the Amex and the other SROs received a letter from the Commission's Division of Market Regulation requesting, among other things, that each SRO conduct an analysis to ascertain the amount of accumulated funds and present a plan for broker-dealers to dispose of or otherwise resolve title to such accumulated funds.[8] The NASD was asked by the Commission to take the lead in coordinating this effort with the other SROs. To ascertain the amount of accumulated funds, the NASD surveyed 240 clearing and self-clearing member firms to review their practices regarding the collection of such fees from customers. After compiling and analyzing the data provided by these firms, the NASD staff found that fewer than half the firms surveyed had an accumulated fund balance. The NASD worked with the other SROs to recommend a potential solution to allow the clearing and self-clearing firms to resolve title to the accumulated funds. It was determined, based upon information provided in connection with the NASD's survey, that it would be virtually impossible to return customer-related accumulated funds to the customers that had paid these funds to the firms.[9]

The proposed rule change is aimed at enabling those fees that may have been collected for purposes of paying an "SEC Fee" or "Section 31 Fee" to be used to pay such fees. The Exchange is proposing a new Commentary to Rule 393 that will allow firms, on a one-time-only basis, voluntarily to remit historically accumulated funds to the Exchange. These funds then would be used to pay the Exchange's current Section 31 fees in conformity with prior representations made by member firms. In addition, a member or member organization may designate all or part of the Exchange-accumulated excess held by the Exchange and allocated to such member be used by the Exchange in accordance with the new Commentary to Rule 393. Finally, to the extent the payment of these historically accumulated funds or Exchange accumulated funds is in excess of the Section 31 fees due the Commission from the Amex, such surplus shall be used by the Exchange to offset regulatory costs.

The Amex proposes that the effective date of the proposed rule change would be the date the Commission Order approving the proposed rule filing is published in the **Federal Register** and the effectiveness of Commentary .01 to Rule 393, once approved, would be for a period of six months.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will provide a transparent way of addressing the issue of accumulated funds held by member firms and by the Exchange.

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 written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2007–107. 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

[7] The Commission stated in its release adopting new Rule 31 and Rule 31T that "it is misleading to suggest that a customer or [SRO] member incurs an obligation to the Commission under Section 31." Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). In response to this statement, the Exchange issued a notice to members regarding its Rule 393 Fee and the Commission's "Section 31 Fee," and provided guidance for members and member organizations that choose to charge their customers fees. *See* Amex Notice REG 2004–42 Finance (October 29, 2004).

[8] In its response to the Division of Market Regulation's letter, the Amex advised that it is in possession of accumulated funds collected from its members as Section 31 fees. Previous to the adoption of Rules 31 and 31T, all monies received by the Amex pursuant to Rule 393 were forwarded to the Commission. However, with the recalculation of Section 31 fees for the whole of the Commission's fiscal year 2004, the Amex found that its members reported and submitted fees exceeding the amount billed by the Commission for fiscal year 2004. *See* Letter to Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, dated January 11, 2005.

[9] The NASD had asked all surveyed firms whether they could "identify and relate the funds to specific customers on a transaction by transaction basis." The surveyed firms universally stated that tracking fractions of a penny to individual customers would be impossible and any over-collections could not be passed back at the customer level. *See* Securities Exchange Act Release No. 55886 (June 8, 2007), 72 FR 32935 (June 14, 2007) (Order approving SR–NASD–2007–027).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2007-107 and should be submitted on or before May 7, 2008

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-8152 Filed 4-15-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57646; File No. SR-CBOE-2008-37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.20A To Permit Sponsored Users Access to the CBOE Stock Exchange Facility

April 10, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 28, 2008, Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by CBOE. CBOE filed the proposed rule change as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend CBOE Rule 6.20A to permit Sponsored User access to the CBOE Stock Exchange ("CBSX") facility. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE 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 Rule 6.20A (Sponsored Users) which governs electronic access for the entry and execution of orders by Sponsored Users with authorized access and the applicable requirements that Sponsored Users and Sponsoring Members must satisfy in order to engage in a Sponsoring Member/Sponsored User relationship. Under the current Rule, the Sponsored User program is only applicable to CBOE's FLEX Hybrid Trading System ("FLEX"). Accordingly, a "Sponsored User" is defined as a person or entity that has entered into a sponsorship arrangement with a Sponsoring Member for purposes of receiving electronic access to FLEX. CBOE is proposing to expand the rule to permit electronic access for the entry and execution of orders by Sponsored Users with authorized access to the CBSX facility.

Under the proposal, Rule 6.20A will apply to Sponsored Users with authorized access to CBSX in the same manner as it applies to Sponsored Users with authorized access to FLEX. Sponsored User access to CBSX will also be conditioned on the same requirements that currently apply to Sponsored Users on FLEX.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b-4(f)(6) thereunder.[8]

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b-4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission

[12] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b-4(f)(6).

[9] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has complied with this requirement.

[10] *Id.*

believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[11] The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2008–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–37 and should be submitted on or before May 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8129 Filed 4–15–08; 8:45 am]

BILLING CODE 8010–01–P

[11] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57647; File No. SR–DTC–2007–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amended Proposed Rule Change to Implement the New Issue Information Dissemination Service for Municipal Securities

April 10, 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 August 16, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on September 12, 2007, March 3, 2008, and April 9, 2008, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission previously published notice of the proposed rule change on October 3, 2007 and March 24, 2008.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks approval to implement the New Issue Information Dissemination System ("NIIDS") for municipal securities. NIIDS is an automated system developed by DTC at the request of the Securities Industry and Financial Markets Association ("SIFMA")[4] in order to improve the mechanism for disseminating new issue information regarding municipal securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Municipal Securities Rulemaking Board ("MSRB") Rule G–14 generally requires municipal securities dealers to report municipal securities transactions to the MSRB within 15 minutes of the time of the trade.[6] Inter-dealer trades eligible for comparison by a clearing agency are required to be submitted through NSCC's Real Time Trade Matching System ("RTTM") within the time frame in Rule G–14. These trades are subsequently reported to the MSRB by NSCC. NSCC requires certain securities information in order to process and report transactions involving those securities. Therefore, it is necessary that dealers trading newly issued municipal securities have the securities information needed for trade submission by the time the trade reporting is required.

Pursuant to current practice in the municipal securities market, each information vendor works separately to obtain information from offering documents and underwriters. Each information vendor's success depends in large part upon the voluntary cooperation of the underwriters. It is not unusual for information vendors to have inconsistent information or for some information vendors to receive information before others.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 56552 (September 27, 2007), 72 FR 56407 (October 3, 2006); Securities Exchange Act Release No. 57513 (March 17, 2008), 73 FR 15548 (March 24, 2008).

[4] The request originated from The Bond Market Association ("BMA"), which has since merged with the Securities Industry Association to form SIFMA.

[5] The Commission has modified the text of the summaries prepared by DTC.

[6] MSRB Rule G–14 RTRS Procedures (a)(ii).

Consequently, critical new issue information may be missing or inaccurate in the automated trade processing systems used by dealers to report the initial trades in new issues. This can result in late trade reports or trade reports that must be canceled and resubmitted or amended because they contain inaccurate data.

NIIDS is designed to improve the process by which new issue information is provided by underwriters to information vendors by collecting information about a new issue from underwriters in an electronic format and making that data available immediately to information vendors. NIIDS is designed to ensure that information is disseminated as quickly and efficiently as possible after the information is made available by the underwriters.[7]

To address concerns that dealers often lack timely access to electronically formatted securities information necessary to process and to report municipal securities transactions in real-time, MSRB Rule G–14 includes a three-hour exemption available to a dealer transacting "when, as, and if issued" municipal securities if the dealer is not a syndicate manager or member for this issue, has not traded the issue in the previous year, and the CUSIP number and indicative data of the issue are not in the dealer's securities master file ("Reporting Exemption").[8] The Reporting Exemption will expire in 2008. In order to prepare for the Reporting Exemption's expiration, SIFMA asked DTC to incorporate a centralized automated mechanism for the collection and dissemination on a real-time basis of the required information as part of the planned reengineering of DTC's underwriting system. DTC built NIIDS to help make the collection and dissemination of new issue information with respect to municipal securities more efficient for the industry.

An industry working group of municipal securities dealers, SIFMA members, the MSRB, and DTC have identified key data elements required for the reporting, comparison, confirmation, and settlement of trades in municipal securities ("NIIDS Data Elements"). Initially, DTC is proposing to make NIIDS available to the municipal securities industry on an optional basis to allow dealers to have some experience with NIIDS before the MSRB mandates its use. DTC proposes to make NIIDS for municipal securities available to participants on an optional basis in May 2008. DTC will mandate the use of NIIDS for municipal securities in September 2008, prior to the expiration of the MSRB Reporting Exemption. DTC periodically has been informing participants of the upcoming implementation of NIIDS and the NIIDS Data Elements through periodically issued Important Notices. Only DTC participants or those entities specifically authorized by a participant ("Correspondent") will be able to input information into NIIDS.[9]

To commence the process, the dissemination agent ("Dissemination Agent") for a new issue must input the NIIDS Data Elements thereby requesting that DTC make the information available to the industry through NIIDS. DTC will not confirm the NIIDS Data Elements but rather will act as a conduit to pass along such information to data vendors. DTC anticipates the data vendors will then disseminate the information to the industry thereby allowing dealers to make timely reporting of their municipal trades. DTC will record the name of the Dissemination Agent that inputs the Data Elements and the time such information is submitted. DTC will begin disseminating the data when it has received authorization from the Dissemination Agent through NIIDS. The Dissemination Agent, by triggering the dissemination decision flag in the NIIDS Data Elements, indicates the information is being sent by it and is in compliance with the terms and conditions of NIIDS. In addition, NIIDS will contain the contact information for the Dissemination Agent that populated the NIIDS Data Elements for a particular issue to enable users of the data to contact it with questions or comments.

DTC is proposing to provide NIIDS to the industry in order to facilitate the collection and dissemination of new issue information in relation to municipal securities. Because DTC does not confirm the accuracy of NIIDS Data Elements and only acts as a conduit of the information, use of NIIDS[10] by any party, including but not limited to participants, correspondents, and vendors ("NIIDS Users")[11] will constitute a waiver of any and all claims direct or indirect against DTC and its affiliates and an agreement that DTC and its affiliates shall not be liable for any loss in relation to the dissemination or use of NIIDS Data Elements, which are provided "as is." Each NIIDS User will agree to indemnify and hold harmless DTC and its affiliates from and against any and all losses, damages, liabilities, costs, judgments, charges, and expenses arising out of or relating to the use of NIIDS.

The MSRB would like dealers to be able to use NIIDS before requiring them to do so by rule.[12] The MSRB has filed with the Commission a rule change that ultimately would require underwriters to use NIIDS in 2008 to coincide with the expiration of the Reporting Exemption.[13] DTC intends to provide the municipal securities industry the opportunity to use NIIDS commencing May 5, 2008. DTC intends to mandate the use of NIIDS for municipal securities commencing Tuesday, September 2, 2008. DTC believes that members of the municipal securities industry will be using NIIDS during the period NIIDS is optional ("Optional Period") to become accustomed to using it. This may result in Dissemination Agents inputting incomplete NIIDS Data Elements while getting acquainted with NIIDS. Therefore, no one should rely on the accuracy of the NIIDS Data Elements during the Optional Period but rather should continue to use existing authorized sources of such information.

DTC will not charge a service fee to underwriters that input or receive information through NIIDS. Additionally, DTC will not charge a service fee to information vendors that will receive information for further dissemination through NIIDS. DTC will charge a connectivity fee to underwriters, service providers, and information vendors that use NIIDS.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[14] and the rules and regulations thereunder because the proposed changes promote the prompt and accurate clearance and settlement of securities transactions by streamlining the collection and dissemination of new issue information for municipal securities throughout the industry.

[7] NIIDS is being incorporated into the update of DTC's underwriting system ("UW Source"). All applicable NIIDS Data Elements must be input into UW Source for a municipal issue to close at DTC.

[8] MSRB Rule G–14 RTRS Procedures (a)(ii)(C).

[9] Participants will be required to identify an authorized party at the Correspondent with whom DTC may interact.

[10] Use of NIIDS shall include but not be limited to the population, dissemination, or processing of NIIDS Data Elements.

[11] Data vendors or others that wish to receive NIIDS Data Elements must register in advance with DTC.

[12] The MSRB received comment on proposed rules that would require underwriters of municipal securities to participate in NIIDS. See MSRB Notice 2007–10 (March 5, 2007) at *http://www.msrb.org*.

[13] Securities Exchange Act Release No. 57002 (December 20, 2007), 72 FR 73939 (December 28, 2007) [File No. SR–MSRB–2007–07].

[14] 15 U.S.C. 78q–1.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2007–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2007–10. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10.pdf*, *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10-amendment.pdf*, *http://dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10-amendment2.pdf*, and *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10-amendment3.pdf*. 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–DTC–2007–10 and should be submitted on or before May 1, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8130 Filed 4–15–08; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11213 and # 11214]

Florida Disaster # FL–00032

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of FLORIDA dated 04/09/2008.

Incident: Fire.

Incident Period: 03/10/2008.

Effective Date: 04/09/2008.

Physical Loan Application Deadline Date: 06/09/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 01/09/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Broward.

Contiguous Counties:

Florida: Collier, Hendry, Miami-Dade, Palm Beach.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.500
Homeowners without credit available elsewhere	2.750
Businesses with credit available elsewhere	8.000
Businesses & small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	5.250
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 11213 5 and for economic injury is 11214 0.

The State which received an EIDL Declaration # is Florida.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 9, 2008.

Steven C. Preston,

Administrator.

[FR Doc. E8–8162 Filed 4–15–08; 8:45 am]

BILLING CODE 8025–01–P

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6191]

Notice of Information Collection Under Emergency Review: DS–4131, Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area, OMB Control Number 1405–xxxx

AGENCY: Department of State.

ACTION: Notice of request for emergency OMB approval.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area.
- *OMB Control Number:* none.
- *Type of Request:* Emergency Review.
- *Originating Office:* Office of Oceans Affairs, Bureau of Oceans, Environment and Science (OES/OA).
- *Form Number:* DS–4131.
- *Respondents:* Operators of Antarctic expeditions organized in or proceeding from the United States.
- *Estimated Number of Respondents:* 22.
- *Estimated Number of Responses:* 22.
- *Average Hours Per Response:* 10.5 hours.
- *Total Estimated Burden:* 231 hours.
- *Frequency:* On occasion.
- *Obligation to respond:* Mandatory.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by May 31, 2008. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), Washington, DC 20503. Fax number 202–395–6974.

During the first 60 days of the emergency approval period, a regular review of this information collection is also being undertaken. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments will be accepted until 60 days from the date that this notice is published in the **Federal Register**.

You may submit comments by any of the following methods:

- *E-mail: HughesLR@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): Lawrence R. Hughes, Office of Oceans Affairs, Room 2665, Bureau of Oceans, Environment, and Science, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lawrence R. Hughes, Office of Oceans Affairs, Room 2665, Bureau of Oceans, Environment and Science, U.S. Department of State, 2201 C Street, NW., Washington DC 20520, who may be reached on (202) 647–0237 or at *HughesLR@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Information solicited on the Advance Notification Form, (DS–4131), is required to provide the U.S. Government with information on tourist and other non-governmental expeditions to Antarctica. This is needed to comply with Article VII(5)(a) of the Antarctic Treaty and comport with Antarctic Treaty Consultative Meeting Recommendation XVIII–1 and Resolution XIX–3.

Methodology

Information will be submitted in signed original by U.S. organizers of tourist and other non-governmental expeditions to Antarctica. Advance copies are submitted by e-mail.

Dated: April 10, 2008.

Constance C. Arvis,

Director of Oceans Affairs, Acting, Bureau of Oceans, Environment and Science, Department of State.

[FR Doc. E8–8157 Filed 4–15–08; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6174]

Announcement of Meetings of the International Telecommunication Advisory Committee

SUMMARY: This notice announces meetings of the International Telecommunication Advisory Committee (ITAC) to receive advice from its ad hoc groups tasked with developing draft advice for the Department of State's positions on telecommunications matters to be taken at meetings of the International Telecommunication Union (ITU), the Organization for Economic Co-operation and Development (OECD), the Asia-Pacific Economic Community (APEC), and the Inter-American Telecommunication Commission (CITEL), and to review the ITAC industry advisory process supporting the activities of the Department of State at the ITU Radiocommunication Sector (ITU–R) and conducted in accordance with the Federal Advisory Committee Act (FACA).

The ITAC will meet on May 14, 2008 2:30–4:30 p.m. Eastern Daylight Time to review the ITAC FACA industry advisory process supporting the activities of the Department of State at the ITU–R, and to receive advice drafted by various ad hoc groups on telecommunications positions to be taken at meetings of the ITU, OECD, APEC, and CITEL.

The ITAC will meet on July 16, 2008, 2:30–4:30p.m. Eastern Daylight Time to review and approve the work performed by the ITAC ad hoc groups preparing advice for meetings of the three sectors of the ITU, OECD, APEC, and CITEL.

Both these meetings will be held at the offices of AT&T at 1120 20th Street, NW., suite 1000, Washington, DC. These meetings are open to the public as seating capacity allows. The public will have an opportunity to provide comments at these meetings. A conference bridge will be available for attendees outside the Washington Metro Area. Conference bridge information is available from the secretariat at *minardje@state.gov* and (202) 647–3234. People desiring further information on these meetings may apply to the secretariat.

Dated: April 4, 2008.

Richard C. Beaird,

International Communications & Information Policy, Department of State.

[FR Doc. E8–8155 Filed 4–15–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program Cincinnati/Northern Kentucky International Airport, Covington, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Kenton County Airport Board under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On October 9, 2007, the FAA determined that the noise exposure maps submitted by the Kenton County Airport Board under Part 150 were in compliance with applicable requirements. On October 9, 2007, the FAA approved the Cincinnati/Northern Kentucky International Airport noise compatibility program. Most of the recommendations of the program were approved.

DATES: *Effective Date:* The effective date of the FAA's approval of the Cincinnati/Northern Kentucky International Airport Noise Compatibility Program is April 4, 2008.

FOR FURTHER INFORMATION CONTACT: Phillip Braden, Federal Aviation Administration, Memphis Airports District Office, 2862 Business Park Drive, Bldg G, Memphis, TN 38118–1555, phone number: 901–322–8180. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Cincinnati/Northern Kentucky International Airport, effective April 4, 2008.

Under Section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport operator with respect to which measure should be recommended for action. The FM's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in FAR Part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Memphis, Tennessee.

Kenton County Airport Board submitted to the FAA on February 21, 2007, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from December 2003 through December 2006. The Cincinnati/Northern Kentucky International Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on October 9, 2007. Notice of this determination was published in the **Federal Register** on October 17, 2007.

The Cincinnati/Northern Kentucky International Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from December 2006 beyond the year 2011. It was requested that FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 47504 of the Act. The FM began its review of the Program on October 9, 2007, and was required by a provisions of the Act to approve or disapprove the program within 180-days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twenty-nine (29) proposed actions for noise mitigation on and off the airport. Sixteen (16) previous measures that were completed or withdrawn were also included for numbering purposes. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied.

The overall program, therefore, was approved by the FAA effective April 4, 2008. Outright approval was granted for twenty-two (22) of the specific program elements. Six measures are approved with conditions because the measures relate to changes in the nighttime preferential runway use program or a departure procedure and require environmental analysis, coordination of timing of implementation and revisions to the Air Traffic Control Tower Order. One proposed measure was disapproved for purposes of Part 150 because the measure would not reduce incompatible land development within the DNL 65

dB contour and the NCP does not indicate that the airport sponsor has selected land use guidelines different from those in Table I of Part 150.

Fourteen of the measures pertaining to the operation of aircraft at CVG were approved, or conditionally approved. Eight of these are continuation of existing preferential operational measures. Two existing measures relating to nighttime arrival and departure runway priorities are approved to be withdrawn at the time three proposed measures modifying the nighttime runway use program are implemented. Because of changes in FAA requirements, one previously approved operational procedure must be modified. The Kenton County Airport Board is currently working with the Air Traffic Organization to develop a refined departure procedure that will result in the same noise benefit as the previously approved flight corridor consistent with FAA Order 8260.3B. The defined procedure, as modified, must be coordinated with the appropriate FAA line of businesses before being published. The ANAV procedure has not been implemented.

Eleven (11) land use measures were approved for continuation or continuation with modification to include additional area. Three implementation measures were approved.

These determinations are set forth in detail in a Record of Approval signed by the FAA on April 4, 2008. The Record of Approval, as well as other evaluation materials and the documents comprising the submiftal, are available for review at the FAA office listed above and at the administrative office of the Kenton County Airport Board. The Record of Approval also will be available on-line at: *http://www.faa.gov//airportsairtraffic/airports/environmental/airportnoise/part150/states/.*

Issued in Memphis, Tennessee on April 8, 2008.

Phillip J. Braden,

Manager, Memphis Airports District Office.

[FR Doc. E8–8056 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group Aviation Rulemaking Committee

ACTION: Notice.

SUMMARY: By **Federal Register** notices (See 72 FR 61202; October 29, 2007 and 73 FR 3510; January 18, 2008) the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill vacant positions on the National Parks Overflights Advisory Group (NPOAG) Aviation Rulemaking Committee (ARC). These previous notices invited interested persons to apply to fill two vacancies representing environmental concerns, due to the two incumbent members completing their respective three-year term appointment on May 30, 2008. This notice informs the public of the persons selected to fill the vacancies on the NPOAG ARC.

FOR FURTHER INFORMATION CONTACT: Barry Brayer, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, P.O. Box 92007, Los Angeles, CA 90009–2007, telephone (310) 725–3800, e-mail: *Barry.Brayer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181. The Act required the establishment of the advisory group within 1 year after its enactment. The NPOAG was established in March 2001.

The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides "advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands."

Membership

The current NPOAG ARC is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG ARC are as follows:

Heidi Williams representing general aviation; Alan Stephen, Elling Halvorson, and Matthew Zuccaro representing commercial air tour operations; Chip Dennerlein, Greg Miller, Mark Peterson, and Don Barger representing environmental concerns; and Rory Majenty and Richard Deertrack representing Native American tribes. The terms of Mark Peterson and Don Barger expire on May 30, 2008.

Selection

Selected to fill these two vacancies, are Kristen Brengel for a new term, and returning member Don Barger. Their terms begin on May 31, 2008. The term of service for NPOAG ARC members is 3 years.

Issued in Hawthorne, CA on March 10, 2008.

Barry Brayer,

Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. E8–8059 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2006–25755]

Operating Limitations at New York LaGuardia Airport; Notice of Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed amendment to order; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) is proposing amending the Order Limiting Scheduled Operations at New York LaGuardia that published in the **Federal Register** on December 27, 2006. This amendment, if adopted, would reduce the number of reservations available for unscheduled operations from six per hour to three per hour.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, Assistant Chief Counsel for Regulations, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267–3073.

DATES: The FAA invites interested persons to submit written comments on this proposal by no later than May 1, 2008 in Docket FAA–2006–25755. We will give full consideration to comments received before we issue a final modification to the Order. You may send comments using any of the following methods:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* West Building, Ground Floor, Room W12–140, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC, 20590 between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

SUPPLEMENTARY INFORMATION: The FAA proposes to modify its December 12, 2006 Order, (the Order) that temporarily limits flight operations at New York's LaGuardia Airport (LaGuardia), pending its promulgation of a long-term regulation to manage congestion at the airport. We propose to reduce the number of unscheduled operations from six per hour to three. These proposed amendments would not affect scheduled operations.

I. Background

Due to LaGuardia's limited runway capacity, the airport cannot accommodate the number of flights that airlines would like to operate without causing significant congestion. The FAA has long limited the number of arrivals and departures at LaGuardia during peak demand periods through the promulgation and implementation of the High Density Rule (HDR).[1] By statute enacted in April 2000, the HDR's applicability to LaGuardia operations terminated as of January 1, 2007.[2] On August 29, 2006, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** in anticipation of the HDR's expiration. 71 FR 51360. In the NPRM, the agency proposed another congestion management program for LaGuardia, which, among other things, would continue to limit the number of scheduled and unscheduled operations at LaGuardia. Because the rulemaking was not completed before January 1, 2007, the FAA, after notice and comment, adopted interim operational limitations on LaGuardia flights through the Order. 71 FR 77854 (December 27, 2006). Without the limits contained in the Order, the FAA projected that severe congestion-related delays would occur as a result of excessive demand at LaGuardia, leading to delays both at LaGuardia and at other airports throughout the National Airspace System.

As part of that Order, the FAA imposed a reservation system for unscheduled operations at the airport. Specifically, the FAA provided that it would accommodate up to six unscheduled reservations per hour during the hours the airport was capped as long as the operators had secured a reservation with Air Traffic Control. The FAA has tentatively decided to reduce that number of available reservations from six to three per hour. Currently, the six hourly reservations held for unscheduled operations are not fully utilized.

The FAA and MITRE's Center for Advanced Aviation System Development (CAASD) has reviewed data on air traffic operations at LaGuardia for calendar year 2007 to determine the level of unscheduled operations at the airport. In 2007 there was an average of 36 weekday operations at the airport from 6 a.m. to 10 p.m., the period the Order is in effect. During the peak hours, unscheduled operations averaged three per hour.

The FAA published an Order imposing a cap on operations at John F. Kennedy International Airport on January 18, 2008. That order took effect March 30, 2008. In addition, the FAA intends to publish an order imposing a cap on operations at Newark Liberty International Airport later this spring. In conjunction with those two orders, the FAA intends to restrict the number of unscheduled operations, other than helicopters, at both airports. The FAA has not proposed to restrict operations at Teterboro.

The FAA is concerned that restricting unscheduled operations at JFK and Newark could encourage operators to move their unscheduled operations from those airports to LaGuardia. Delay numbers at LaGuardia for 2007 were among the highest in the country. The FAA is concerned that if additional unscheduled operations move to LaGuardia, those numbers could be even higher. To ensure that this does not happen, the FAA has tentatively decided to reduce the allowable number of unscheduled operations from six to three per hour.

Additional reservations could be made available for unscheduled operations depending on the weather, runway configuration or less than anticipated delays. In such instances the FAA would likely allow more than three unscheduled operations in a given hour. It is unlikely that the FAA would know more than eight hours in advance whether additional capacity is available. If additional capacity is available, reservations would be allocated through the Airport Reservation Office's e-CVRS reservation system and not through the local air traffic control facilities.

II. Proposed Amendment to the Order

With respect to unscheduled flight operations at LaGuardia, the FAA proposes to adopt the following measures:

1. The final order applies to all operators of unscheduled flights, except helicopter operations, at LaGuardia from 6 a.m. through 9:59 p.m., Eastern Time, Monday through Friday and from 12 noon through 9:59 p.m., Eastern Time, Sunday.

2. The final Order takes effect on January 1, 2007, and will expire at the first change of the scheduling season occurring no less than 90 days after the issuance of a final rule regulating congestion at LaGuardia.

3. No person can operate an aircraft other than a helicopter to or from LaGuardia unless the operator has received, for that unscheduled operation, a reservation that is assigned by the David J. Hurley Air Traffic Control System Command Center's Airport Reservation Office (ARO). Additional information on procedures for obtaining a reservation will be available via the Internet at *http://www.fly.faa.gov/ecvrs.*

4. Three (3) reservations are available per hour for unscheduled operations at LaGuardia. The ARO will assign reservations on a 30-minute basis.

5. The ARO receives and processes all reservation requests. Reservations are assigned on a "first-come, first-served" basis, determined as of the time that the ARO receives the request. A cancellation of any reservation that will not be used as assigned would be required.

6. Filing a request for a reservation does not constitute the filing of an instrument flight rules (IFR) flight plan, as separately required by regulation. After the reservation is obtained, an IFR flight plan can be filed. The IFR flight plan must include the reservation number in the "remarks" section.

[1] See 49 CFR part 93, subpart K.

[2] Aviation Investment and Reform Act for the 21st Century (AIR–21), P.L. 106–181 (April 5, 2000), 49 U.S.C. 41715(a)(2).

7. Air Traffic Control will accommodate declared emergencies without regard to reservations. Non-emergency flights in direct support of national security, law enforcement, military aircraft operations, or public-use aircraft operations will be accommodated above the reservation limits with the prior approval of the Vice President, System Operations Services, Air Traffic Organization. Procedures for obtaining the appropriate reservation for such flights are available via the Internet at *http://www.fly.faa.gov/ecvrs.*

8. Notwithstanding the limits in paragraph 4, if the Air Traffic Organization determines that air traffic control, weather, and capacity conditions are favorable and significant delay is not likely, the FAA can accommodate additional reservations over a specific period. Unused operating authorizations can also be temporarily made available for unscheduled operations. Reservations for additional operations are obtained through the ARO.

9. Reservations cannot be bought, sold, or leased.

III. Request for Comments

The FAA invites all interested persons to submit written comments on the proposals described in this order by filing their written views in Docket FAA–2006–25755 on or before May 1, 2008. The FAA does not intend this proposal to address the longer-term issues that will be considered in the related proposed rulemaking. Therefore, any submissions to the current docket should focus on the issues specified in this proposed order.

Issued in Washington, DC, on April 10, 2008.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations, Federal Aviation Administration.

[FR Doc. E8–8106 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In January 2008, there were four applications approved. This notice also includes information on two applications, approved in December 2007, inadvertently left off the December 2007 notice. Additionally, 15 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Columbus Regional Airport Authority, Columbus, Ohio.

Application Number: 08–08–C–00–CMH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $71,050,296.

Earliest Charge Effective Date: February 1, 2010.

Estimated Charge Expiration Date: April 1, 2013.

Class of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators when enpianing revenue passengers in service and equipment reportable to FAA on FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for tess than 1 percent of the total annual enplanements at Port Columbus International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level: Preliminary planning, preliminary engineering, preliminary feasibility and other studies for replacement runway 10R128L.

Environmental impact statement—replacement runway 1 OR/28L. Crossover taxiway.

Air rescue replacement vehicle.

Concourse B capacity enhancements.

Brief Description of Projects Approved for Collection and Use at a $3.00 PFC Level: Pavement management program updates.

High-speed runway brooms with plows.

Terminal heating, ventilation and air conditioning, lighting, and electrical improvements.

Ticket lobby restroom expansion.

Concourse A and related terminal modifications and improvements.

International Gateway roadway loop system.

Stelzer Road/International Gateway interchange—east element.

Stelzer Road/International Gateway interchange—west element.

Project formulation.

Decision Date: December 26, 2007.

FOR FURTHER INFORMATION CONTACT: Irene Porter, Detroit Airports District Office, (734) 229–2915.

Public Agency: City of Cortez, Colorado.

Application Number: 08–02–C–00–CEZ.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $339,072.

Earliest Charge Effective Date: March 1, 2008.

Estimated Charge Expiration Date: March 1, 2016.

Class of Air Carriers Not Required To Collect PFCs: Part 135 operators.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enpianements at Cortez Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Widen taxiway A north and construct A–3 connector.

Acquire land.

Airport layout plan update.

Resurface runway 3/21 (design).

Resurface runway 3/21 (construction).

Construct helicopter parking ramp.

Tie-down ramp rehabilitation.

Construct snow removal equipment building.

Widen taxiway A south and construct A–4 connector.

Decision Date: December 28, 2007.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Cities of Midland and Saginaw and County of Bay, Saginaw, Michigan.

Applications Number: 08–06–C–00–MBS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,783,693.

Earliest Charge Effective Date: April 1, 2008.

Estimated Charge Expiration Date: February 1,2011.

Class of Air Carriers Not Required To Collect PFCs: Part 135 air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has

determined that the approved class accounts for less than 1 percent of the total annual enplanements at MBS International Airport.

Brief Description of Projects Approved for Collection and Use:

Design and construct sand storage building.

Reimbursement of PFC application preparation.

Reimbursement of audits for PFC program.

Terminal renovation study, phase 1.

Design and construct security system (flight information display system).

Snow removal equipment material spreader procurement.

Terminal sewer system rehabilitation.

Design and construct airfield pavement marking.

Terminal study, phase 2.

Land consultant.

Snow removal equipment snow sweeper procurement.

Rehabilitate general aviation apron, taxiway to 05 end, blast pads, taxiway A, and terminal apron.

Land acquisition, Krauss property.

Design of new terminal building.

Construct new terminal building utilities/site preparation.

Construct new terminal foundation and steel framing.

Decision Date: January 3, 2008.

FOR FURTHER INFORMATION CONTACT: Jason Waft, Detroit Airports District Office, (734) 229–2906.

Public Agency: City of Greenville, Mississippi.

Application Number: 08–05–C–00–GLH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $39,427.

Earliest Charge Effective Date: August 1, 2008.

Estimated Charge Expiration Date: August 1, 2011.

Class of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Mid Delta Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate medium intensity runway lighting, runway 18R136L.

Rehabilitate runway 18R136L pavement.

Acquire aircraft rescue and firefighting equipment.

Runway 18L/36R safety area improvements, phase I.

Decision Date: January 3, 2008.

FOR FURTHER INFORMATION CONTACT: Jeffrey Orr, Jackson Airports District Office, (601) 664–9885.

Public Agency: County of Westchester, White Plains, New York.

Application Number: 08–04–C–00–HPN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $4,000,000.

Earliest Charge Effective Date: December 1, 2008.

Estimated Charge Expiration Date: January 1, 2010.

Class of Air Carriers Not Required To Collect PFCs: Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Westchester County Airport.

Brief Description of Project Approved for Collection and Use:

Construct two passenger walkways.

Decision Date: January 24, 2008.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, New York Airports District Office, (516) 227–3812.

Public Agency: City of Roswell, New Mexico.

Application Number: 08–03–C–00-ROW.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $148,988.

Earliest Charge Effective Date: March 1, 2008.

Estimated Charge Expiration Date: June 1, 2009.

Class of Air Carriers Not Required To Collect PFCs: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate runway 3/21.

Rehabilitate taxiway.

Construct aircraft rescue and firefighting access roads.

Construct east service road.

Terminal heating, ventilation, and air conditioning and re-roof.

Procure aircraft rescue and firefighting truck.

Restroom modification, terminal.

Elevator replacement terminal building.

Electric vault and signage.

PFC administration.

Decision Date: January 28, 2008.

FOR FURTHER INFORMATION CONTACT: Andy Velayos, Louisiana! New Mexico Airports Development Office, (817) 222–5647.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
*05–02–C–01–SBY, Salisbury, MD	09/28/07	$1,827,724	$1,386,715	07/01/14	06/01/12
92–01–C–05–STL, St. Louis, MO	12/17/07	67,933,947	58,088,964	08/01/95	08/01/95
95–02–C–07–STL, St. Louis, MO	12/17/07	75,131,773	67,032,109	07/01/97	07/01/97
00–06–C–02–STL, St. Louis, MO	12/17/07	856,241,230	616,496,417	04/01/14	12/01/17
01–07–C–02–STL, St. Louis, MO	12/17/07	81,330,000	64,824,753	12/01/16	06/01/19
03–08–C–01–STL, St. Louis, MO	12/17/07	13,806,955	0	06/01/17	06/01/19
06–05–C–01–RDM, Redmond, OR	01/03/08	645,420	1,229,416	05/01/08	05/01/08
03–04–C–02–JAN, Jackson, MS	01/07/08	5,101,722	4,639,569	01/01/08	11/01/07
05–08–C–02–COS, Colorado Springs, CO	01/10/08	7,422,980	7,756,638	09/01/05	10/01/05
07–11–C–01–COS, Colorado Springs, CO	01/10/08	758,359	1,942,578	08/01/09	12/01/09
04–08–C–01–EYW, Key West, FL	01/11/08	425,250	360,250	07/01/05	07/01/05
03–13–C–01–OAK, Oakland, CA	01/14/08	176,267,000	190,285,000	09/01/10	03/01/11
00–06–C–05–MKE, Milwaukee, WI	01/15/08	130,460,739	130,560,739	02/01/14	02/01/14
00–03–C–01–CHA, Chattanooga, TN	01/18/08	23,427,222	19,746,474	05/01/15	01/01/12
06–03–C–01–HVN, New Haven, CT	01/24/08	663,054	805,753	06/01/07	02/01/09

The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Salisbury, MD, this change is effective on March 1, 2008.

Issued in Washington, DC on April 3, 2008.

Myrna Rivera,

Acting Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E8–8078 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 2008, there were four applications approved. This notice also includes information on three applications, one approved in December 2006, one approved in November 2007, and the remaining approved in January 2008, inadvertently left off the December 2006, November 2007, and January 2008 notices, respectively. Additionally, six approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Broome, Binghamton, New York.

Application Number: 06–09–C–00–BGM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $106,875.

Earliest Charge Effective Date: September 1, 2008.

Estimated Charge Expiration Date: January 1, 2009.

Class of Air Carriers Not Required To Collect PFC's:

Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Greater Binghamton Airport.

Brief Description of Projects Approved for Collection and Use: Obstruction removal.

Snow removal equipment purchase.

Brief Description of Project Approved for Use: Runway 10/28 safety area.

Decision Date: December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: County of Broome, Binghamton, New York.

Application Number: 08–10–C–00–BGM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,047,455.

Earliest Charge Effective Date: March 1, 2009.

Estimated Charge Expiration Date: April 1, 2011.

Class of Air Carriers Not Required to Collect PFC'S:

Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Greater Binghamton Airport.

Brief Description of Project Approved for Collection and Use: Terminal security improvements.

Brief Description of Projects Approved for Collection:

North/west aprons rehabilitation, phase I—design.

North/west aprons rehabilitation, phase II—construction.

Main ramp rehabilitation, phase I—design.

Main ramp rehabilitation, phase II—construction.

Decision Date: November 6, 2007.

FOR FURTHER INFORMATION CONTACT: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: City and Borough of Juneau, Juneau, Alaska.

Application Number: 08–08–C–00–JNU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $8,142,712.

Earliest Charge Effective Date: September 1, 2008.

Estimated Charge Expiration Date: March 1, 2016.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Runway safety area (design and construction).

Sand/chemical storage building (design and construction).

Apron development (northeast quadrant); design and construction.

Apron development (northwest quadrant); design and construction.

Security fencing construction (gate).

Terminal expansion (design and construction).

Acquire snow removal equipment.

Decision Date: January 22, 2008.

FOR FURTHER INFORMATION CONTACT: Pat Oien, Alaska Region Airports Division, (907) 271–5445.

Public Agency: Monterey Peninsula Airports District, Monterey, California.

Application Number: 08–13–C–00–MRY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $856,394.

Earliest Charge Effective Date: August 1, 2008.

Estimated Charge Expiration Date: August 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.

Brief Description of Projects Approved for Collection and Use:

Residential soundproofing, phases XI and XII.

Acquire aircraft rescue and firefighting vehicle.

Airfield pavement improvements.

Airfield lighting and signage rehabilitation.

Noise exposure map update.

Runway safety area study.

Decision Date: February 7, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Biaoco, San Francisco Airports District Office, (650) 876–2778, extension 626.

Public Agency: City of Rochester, Minnesota.

Application Number: 08–04–C–00–RST.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,555,114.

Earliest Charge Effective Date: August 1, 2008.

Estimated Charge Expiration Date: January 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled Part 135 commuters and air taxis.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Rochester International Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition, 37 acres.

Aircraft rescue and firefighting vehicle.

Pavement between air carrier and cargo ramps.

Rehabilitate runway 2/20.

Runway 13/31 extension—phase I engineering and planning.

Runway 13/31 extension—grading.

Runway 13/31 extension—phase II engineering.

Runway 13/31 extension—electrical equipment.

Runway 13/31 extension—navigational aid relocation.

Runway 13/31 extension—construction phase.

Runway 13/31 extension—electrical (in pavement).

Runway 13/31 extension—engineering for navigational aid relocation.

Navigational aid equipment and installation.

Electrical vault for airside power equipment.

Runway 13/31 extension—highway relocation.

PFC administration fees.

Environmental assessment for runway 13/31 extension.

Decision Date: February 20, 2008.

FOR FURTHER INFORMATION CONTACT: Nancy Nistler, Minneapolis Airports District Office, (612) 713–4353.

Public Agency: County and City of Yakima, Yakima, Washington.

Application Number: 08–1 1-C–00-YKM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $783,961.

Earliest Charge Effective Date: June 1,2008.

Estimated Charge Expiration Date: November 1, 2011.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operator—nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Yakima Air Terminal/McAllister Field.

Brief Description of Projects Approved for Collection and Use:

Environmental and pie-design of south 16th Avenue relocation.

Master plan update—runway length.

Pavement maintenance—crack seal.

Security enhancements.

Upgrade taxiway guidance sign system.

Runway 22 traverse way (service road).

Construct "C" stub taxiway.

Aviation demand forecast.

Brief Description of Project Approved for Collection: Relocate south 16th Avenue/safety area/service road.

Decision Date: February 21, 2008.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

Public Agency: City of Brownsville, Texas.

Application Number: 08–04-C–00-BRO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $234,956.

Earliest Charge Effective Date: October 1, 2009.

Estimated Charge Expiration Date: June 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Pavement management plan.

Taxiway G reconstruction, phase I.

Displace runway 17/35 threshold.

PFC application and administration fees.

Decision Date: February 25, 2008.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, Texas Airports Development Office, (817) 222–5606.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
04–06–C–01–BTM, Butte, MT	2/07/08	$189,711	$184,956	02/01/07	06/01/06
98–03–C–04–TLH, Tallahassee, FL	2/12/08	3,770,045	3,753,489	10/01/02	10/01/02
03–04–C–01–LET, Lafayette, LA	2/20/08	1,967,250	2,351,898	04/01/08	04/01/08
96–02–C–01–SAV, Savannah, GA	2/22/08	1,439,445	977,956	06/01/10	05/01/10
02–05–C–01–SAV, Savannah, GA	2/22/08	3,015,790	2,633,876	05/01/12	03/01/12
06–06–C–01–SAV, Savannah, GA	2/22/08	3,231,473	4,480,700	11/01/12	03/01/13

Issued in Washington, DC on April 4, 2008.

Myrna Rivera

Acting Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E8–8080 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 2008, there were five applications approved. This notice also includes information on four applications, approved in February 2008, inadvertently left off the February 2008 notice. Additionally, 10 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of

1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Chattanooga Metropolitan Airport Authority, Chattanooga, Tennessee.
Application Number: 08–04–C–00–CHA.
Application Type: Impose and use a PFC.
PFC level: $4.50.
Total PFC Revenue Approved in This Decision: $2,413,001.
Earliest Charge Effective Date: August 1, 2010.
Estimated Charge Expiration Date: October 1, 2012.
Class of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chattanooga Metropolitan Airport.
Brief Description of Projects Approved for Collection and Use:
Aircraft rescue and firefighting station.
Taxiway H, phases I and II.
Runway 15/33 rehabilitation.
Taxiway A north.
New electrical vault.
Access control system upgrade.
Replace runway weather information system.
Repair commercial service ramp.
Obstruction clearing for runway 2.
Runway 2/20 crack seal repair.
Master plan.
Design, relocation, and reconstruction of taxiways A, B, and C.
West airfield apron.
Ground support equipment.
PFC application development.
PFC program administration.
Decision Date: February 27, 2008.
FOR FURTHER INFORMATION CONTACT: Cynthia Wills, Memphis Airports District Office, (901) 322–8190.

Public Agency: County of Mohave, Bullhead City, Arizona.
Application Number: 08–01–C–00–IFP.
Application Type: Impose and use a PFC.
PFC Level: $2.00.
Total PFC Revenue Approved in This Decision: $744,600.
Earliest Charge Effective Date: May 1, 2008.
Estimated Charge Expiration Date: July 1, 2012.
Class of Air Carriers Not Required To Collect PFCS: None.
Brief Description of Projects Approved for Collection and Use:
Airport master plan, phases I and II.
Terminal building rehabilitation.
Runway 16/34 rehabilitation.
Runway safety area improvements—runway 16.
Acquire aircraft rescue and firefighting protective clothing.
Air traffic control tower radio equipment.
Rehabilitate access road and parking lot.
Rehabilitate aircraft parking apron.
Construct taxiway D extension.
Acquire high-speed sweeper.
Acquire aircraft rescue and firefighting vehicle.
Construct aircraft rescue and firefighting station.
Environmental assessment for land acquisition.
Install emergency generator.
Improve airport drainage.
PFC administrative costs.
Brief Description of Project Approved for Collection: Extend runway 16/34 (design only).
Decision Date: February 28, 2008.
FOR FURTHER INFORMATION CONTACT: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: County of Chemung, Elmira, New York.
Application Number: 08–02–C–00–ELM.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $641,046.
Earliest Charge Effective Date: May 1, 2008.
Estimated Charge Expiration Date: March 1, 2010.
Classes of Air Carriers Not Required To Collect PFCs: On demand commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Elmira-Corning Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Rehabilitate runway 6/24.
Design Echo apron expansion.
Design Alpha apron expansion.
Environmental assessments.
PFC application.
Design commercial apron rehabilitation.
Construct Alpha apron rehabilitation.
Access road and drainage improvement.
Construct commercial apron rehabilitation.
Construct Echo apron expansion.
Brief Description of Projects Approved for Collection:
Design parallel taxiway A and taxiway L.
Acquire easement for runway 10/28 runway protection zone.
Acquire road right-of-way in fee simple.
Acquire land for runway 24 runway protection zone.
Construct parallel taxiway A and taxiway L.
Design runway 24 and taxiway A extension.
Construct runway 24 and taxiway A extension.
Brief Description of Projects Approved for Use:
Rehabilitate taxiway D.
Runway 6 extension, phase I.
Brief Description of Disapproved Project: Land release at intersection of Chambers Road and Schweizer Road.
Determination: The project does not meet the requirements of § 158.15(a).
Decision Date: February 28, 2008.
FOR FURTHER INFORMATION CONTACT: John Moretto, New York Airports District Office, (516) 227–3806.

Public Agency: City of Manchester, New Hampshire.
Application Number: 08–12–U–00–MHT.
Application Type: Use PFC revenue.
PFC Level: $3.00.
Total PFC Revenue To Be Used in This Decision: $11,401,727.
Charge Effective Date: November 1, 2018.
Estimated Charge Expiration Date: October 1, 2020.
Class of Air Carriers Not Required To Collect PFCs: No change from previous decision.
Brief Description of Projects Approved for Use:
Glycol collection system.
Extension of runway 24 safety area.
Decision Date: February 29, 2008.
FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: City of Colorado Springs, Colorado.
Application Number: 08–12–C–00–COS.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $2,494,547.
Earliest Charge Effective Date: December 1, 2009.
Estimated Charge Expiration Date: December 1, 2010.
Class of Air Carriers Not Required To Collect PFCs: None.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate portions of taxiways E, E1–8, G and H (phase II).

Vehicle service road—east side perimeter (phase II).

Jet bridge reconfiguration.

Public roadway signage.

Decision Date: March 20, 2008.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Missoula County Airport Authority, Missoula, Montana.

Application Number: 08–07–C–00–MSO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $8,106,363.

Earliest Charge Effective Date: December 1, 2008.

Estimated Charge Expiration Date: October 1, 2016.

Class of Air Carriers Not Required To Collect PFC's: Nonscheduled on-demand (air taxi) carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Missoula International Airport.

Brief Description of Projects Approved for Collection and Use:

Relocate security checkpoints.

Relocate localizer.

Grade object free area/runway safety area transition.

Construct fire apparatus vehicle storage facility.

Rehabilitate runway 11/29.

Improve airfield lighting.

Replace and upgrade runway pavement sensor system.

Previous and current PFC application preparation costs.

Update airport master plan study.

Security phase II—perimeter gate enhancements and system upgrade.

Terminal area safety enhancements.

Acquire aircraft rescue and firefighting equipment.

Expand snow removal equipment storage building.

Expand emergency operations center.

Acquire interactive employee training system.

Acquire liquid deicing vehicle and storage tank.

Acquire snow removal equipment (loader with snow plow).

Rehabilitate taxiways Delta, Alpha3, and north Golf.

Brief Description of Project Partially Approved for Collection and Use: Acquire one new public safety vehicle.

Determination: The public agency had requested approval to acquire two public safety vehicles. However, the FAA determined that the second vehicle was for redundancy and exceeded known requirements. Thus, the FAA limited its approval to one vehicle.

Decision Date: March 20, 2008.

FOR FURTHER INFORMATION CONTACT: Dave Stelling, Helena Airports District Office, (406) 449–5271.

Public Agency: County of Sonoma, Santa Rosa, California.

Application Number: 08–04–C–00–STS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,594,049.

Earliest Charge Effective Date: May 1, 2008.

Estimated Charge Expiration Date: February 1, 2012.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Acquire land for runway approach protection (53 acres).

Obstruction removal.

Security enhancements.

Airfield vacuum sweeper.

Terminal building modernization—security screening upgrades.

Emergency equipment.

Cost benefit analysis for new terminal.

Brief Description of Withdrawn Project: Acquire two trucks, sweeper, and airfield inspection software.

Date of Withdrawal: March 19, 2008.

Decision Date: March 21, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Biaoco, San Francisco Airports District Office, (650) 876–2778, extension 626.

Public Agency: County of Manistee, Manistee, Michigan.

Application Number: 08–01–C–00–MBL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $388,986.

Earliest Charge Effective Date: June 1, 2008.

Estimated Charge Expiration Date: November 1, 2040.

Class of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Manistee County Blacker Airport.

Brief Description of Projects Approved for Collection and Use: Runway 09/27 surface treatment; precision approach path indicator lights, runway 27.

Fuel farm construction.

New runway 09/27 design engineering.

Snow removal equipment plow truck/sand spreader.

Construct and grade runway 09/27.

Land acquisition (AM 548).

Construction supervision.

Instrument landing system/very high frequency omnirange/automatic weather observation station site preparation.

Perimeter fencing design engineering.

Instrument landing system/medium intensity approach lighting system with runway alignment indicator lights/precision approach path indicator lights relocations.

Land parcels 24, 25, 26, and 27 (AM 646).

Install perimeter fence.

Environmental review of 41 land swap.

Rehabilitate runway 18/36 taxiway and apron.

Snow removal equipment building rehabilitation.

Snow removal equipment plow truck/material spreader.

Land reimbursement, runway 18 approach.

Procurement documents for aircraft rescue and firefighting and snow removal equipment vehicles.

Decision Date: March 21, 2008.

For Further Information Contact: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: City of Redmond, Oregon.

Application Number: 08–06–C–00–RDM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,781,478.

Earliest Charge Effective Date: May 1, 2008.

Estimated Charge Expiration Date: May 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators—nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than I percent of the total annual enplanements at Roberts Field.

Brief Description of Projects Approved for Collection and Use: Construction management—terminal expansion.

Construction—terminal expansion.

Decision Date: March 27, 2008.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Seattle Airports District Office, (425) 227–1662.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
00–03–C–02–CHA, Chattanooga, TN	02/13/08	$19,746,474	$5,752,115	01/01/12	08/01/10
01–08–C–02–BNA, Nashville, TN	03/03/08	4,514,173	4,328,889	10/01/02	10/01/02
92–01–C–02–GUM, Agana, CU	03/04/08	800,000	568,661	06/01/94	06/01/94
95–0 1–C–03–SYR, Syracuse, NY	03/17/08	6,737,425	3,954,577	04/01/97	04/01/97
94–01–C–01–LSE, LaCrosse, WI	03/18/08	795,299	571,966	08/01/97	08/01/97
96–02–C–03–LSE, LaCrosse, WI	03/19/08	84,367	84,734	11/01/99	11/01/99
97–03–C–03–LSE, LaCrosse, WI	03/19/08	485,000	473,343	03/01/00	03/01/00
97–04–C–01–LSE, LaCrosse, WI	03/19/08	615,000	245,313	03/01/02	09/01/01
*03–02–C–02–LGB, Long Beach, CA	03/21/08	62,344,903	62,344,903	05/01/17	10/01/14
06–03–C–01–LGB, Long Beach, CA	03/21/08	7,148,186	7,148,186	12/01/18	11/01/15

Notes: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Long Beach, CA this change is effective on May 1,2008.

Issued in Washington, DC on April 8, 2008.

Myrn Rivera,

Acting Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. E8–8066 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Association of American Railroads

(Waiver Petition Docket Number FRA–2008–0015)

The Association of American Railroads (AAR), on behalf of its member railroads, seeks a waiver of compliance with the Locomotive Safety Standards, 49 CFR Parts 229.27(a)(2) and 229.29(a), as they pertain to the requirements to clean, repair and test airbrake equipment associated with locomotive remote control systems manufactured by Cattron-Theimeg Inc. (Accuspeed, Beltpack, and Cantrac brands); Control Chief Corporation (MU & Go, Train Chief II, and Plug & Go brands); and General Electric Company (Locotrol brand). AAR requests to change the time interval requirements for the additional air brake equipment to align with the requirements for the other brake equipment on each locomotive, set by waiver for locomotives equipped with 26L air brakes at 1,104 days if not equipped with an air dryer (Docket No. H–80–7) or 1,472 days if equipped with an air dryer (Docket No. FRA–2005–21325) and at 5 years or longer for locomotives equipped with electronic air brakes (Docket Nos. FRA–2000–7367, FRA–2002–13397, FRA–1999–6252 and FRA–2005–21613).

In support of its application, AAR states that a precedent has been established by waiver Docket Number FRA–2006–24224, which granted relief to the Canadian National Railway (CN), extending the clean, repair and test interval to 1,472 days for remote control brake valves in the Cattron-Theimeg Beltpack brand systems. AAR contends that there is no reason that one railroad be permitted longer inspection intervals than other railroads and that there is also no justification for giving one remote control system longer inspection intervals than other systems.

AAR recognizes that the CN waiver retains the requirement for cleaning air brake filtering devices every 368 days and agrees to this restriction. As attachments to the waiver petition, AAR also submitted letters from Cattron-Theimeg recommending a 5-year inspection interval for their three remote control locomotive (RCL) systems, a letter from Control Chief recommending a 48-month service interval for all of their RCL air brake components, and a page from the General Electric Locotrol Maintenance manual recommending a 5-year interval.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2008–0015) and may be submitted by any of the following methods:

Web site: http://www.regulations.gov. Follow the online instructions for submitting comments.

Fax: 202–493–2251.

Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on April 9, 2008.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–8103 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2008–01

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of Safety Advisory; damage to intermediate air hose elbow connection on certain freight cars equipped with end-of-car cushion devices.

SUMMARY: FRA's Office of Safety Assurance and Compliance Motive Power and Equipment (MP&E) Division has been notified that certain freight cars equipped with end-of-car cushioning (EOCC) devices may have damage to a 90-degree elbow connected to the trainline angle cock.

FOR FURTHER INFORMATION CONTACT: Tom Blankenship, Mechanical Engineer, MP&E Division (RRS–14); FRA Office of Safety Assurance and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone: (202) 493–6446.

SUPPLEMENTARY INFORMATION: On newly constructed freight cars, the air brake trainline must pass the Association of American Railroads (AAR) Standard S–471, *Brake Pipe Restriction Test.* This requirement is used to verify the clear and open path of air to adequately operate the train air brake system. The *Brake Pipe Restriction Test* requires that a 1-inch round nylon ball be transmitted through the trainline under air pressure of 80 psi.

The intermediate air hose arrangement, as shown in Rule 4, Figure 22 of the Field Manual of the AAR Interchange Rules, shows a 90-degree swivel elbow connected to the angle cock. The intermediate air hose (located between the angle cock and the standard air brake hose) has this 90-degree elbow attached to the air hose end of the angle cock. When cars are uncoupled while charged with air, the glad hand on the standard air brake hose can (if not properly restrained) whip back and strike the 90-degree elbow. The violent impact of the glad hand striking this elbow causes the elbow to bend or flatten and subsequently restrict the air flow. This bending or flattening of the 90-degree elbow, if uncorrected, can cause sticking brakes, wheel tread buildup, and diminished capacity of the train air brake system. Freight cars with bent or flattened 90-degree elbows are in violation of Title 49 Code of Federal Regulations (CFR) section 232.205(c)(3), which states in part, "air hoses shall be properly coupled and shall not kink, bind, or foul or be in any other condition that restricts air flow."

FRA has found damage to the intermediate air hose arrangement 90-degree elbow on ATSF 621000–, ATSF 622000–, and BNSF 534000-series cars owned by BNSF Railway (BNSF). BNSF has implemented an aggressive program to address this issue on cars in their ownership by fleet inspection and repair of cars found with damage to the 90-degree elbow.

Additional cars that have been observed with this type of defect include LW 42000-series box cars and TBOX 660000-series box cars.

Recommended Action: Recognizing the need to ensure safety, FRA recommends that railroads and car owners that operate freight cars equipped with EOCC devices having intermediate air hoses with 90-degree elbows subject to the damage described above initiate an inspection and repair program to ensure cars are maintained in accordance with AAR Interchange Rule 4, Figure 22, and that the trainline is not obstructed or restricted.

FRA may modify this Safety Advisory 2008–01, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on April 9, 2008.

Jo Strang,

Associate Administrator for Safety.

[FR Doc. E8–8104 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Intent To Prepare an Environmental Impact Statement for the Lake Oswego to Portland Transit Project in the Portland, OR Metropolitan Area

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and Metro (the regional government that serves the 25 cities and three counties of the Portland, Oregon metropolitan area), in cooperation with the cities of Lake Oswego and Portland, Clackamas and Multnomah counties; Oregon Department of Transportation (ODOT) and the Tri-County Metropolitan Transportation District of Oregon (TriMet), will prepare an Environmental Impact Statement (EIS) to evaluate the benefits and impacts of proposed transit improvements. Three alternatives are proposed: (1) A No-Build alternative that includes everything in the Metro Regional Transportation Plan, not including the proposed project, and with a continuation of present day bus service policies in place of the project; (2) a streetcar alternative that would extend the existing Portland Streetcar system approximately 1.2 miles to a short terminus in Johns Landing, or 5.7 miles to a terminus in downtown Lake Oswego, with connecting bus service in the corridor, and (3) an enhanced bus alternative with capital improvements between downtown Portland and Lake Oswego and connecting bus service to the rest of the corridor. FTA and Metro will prepare the EIS in accordance with FTA regulations (23 CFR 771 *et seq.*) implementing the National Environmental Policy Act (NEPA), and with the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). This Notice alerts interested parties of the intent to prepare the EIS, provides information on the nature of the proposed transit project, invites participation in the EIS process (including comments on the scope of the EIS proposed in this notice), and announces an upcoming public scoping meeting.

DATES: *Comment due date:* Written comments on the scope of the EIS, including the preliminary purpose and need for transit improvements in the corridor, the alternatives to be considered, the environmental and

community impacts to be evaluated, and any other project-related issues, should be sent to the Lake Oswego to Portland Transit Project, at the address below, by July 18, 2008. *Scoping meeting date:* A public scoping meeting will be held on April 21, 2008 at 6 p.m. at the location indicated in **ADDRESSES** below. Oral and written comments may be given at the scoping meeting. An agency scoping meeting was held on September 26, 2007, to collect comments of local, State and federal agencies with an interest in the proposed project.

ADDRESSES: Written comments on the scope of the EIS should be sent to Lake Oswego to Portland Transit Project, Metro, 600 NE Grand Avenue, Portland Oregon 97232. Comments may also be offered at the public scoping meeting. The public scoping meeting will be at: Community Room, Lakewood Center for the Arts, 368 S. State Street, Lake Oswego, OR 97034. This meeting place is accessible to persons with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, may contact Karen Withrow at (503) 797–1932 at least 48 hours before the meeting. A scoping information packet will be available before the meeting on the Metro Web site (*www.metro-region.org*) or by calling Karen Withrow at (503) 797–1932; copies will also be available at the public scoping meeting.

FOR FURTHER INFORMATION CONTACT: John Witmer, Community Planner, Federal Transit Administration, Region 10, (206) 220–7954.

SUPPLEMENTARY INFORMATION: *Scoping:* FTA and Metro invite all interested individuals and organizations, public agencies and Native American Tribes to comment on the scope of the EIS, including the project's proposed purpose and need, the proposed alternatives to be analyzed in the EIS and the proposed impacts to be evaluated. Each is described below.

Background: The Lake Oswego to Portland corridor is environmentally, topographically and physically constrained. Future roadway expansion is not anticipated and probably not feasible, and previous planning studies have concluded that a high capacity transit improvement is needed to provide additional corridor capacity. In 1988, a consortium of seven government agencies purchased the Willamette Shore Line right-of-way connecting Lake Oswego to Portland for the purpose of preserving the rail right-of-way for future rail transit service. The 2004 Regional Transportation Plan (RTP) identified the need for a corridor refinement plan for a high capacity transit option for this corridor. Metro led a broad-based alternatives analysis that published its results in June 2007. After public review and comment, the Metro Council adopted Resolution No. 07–3887A, advancing three alternatives into an EIS. Public comment is summarized in a comment report dated January 2008.

Preliminary statement of purpose of and need for the project. The project is needed because mobility and traffic conditions in this corridor are projected to worsen as population and employment projections for Portland and Clackamas County continue to grow, especially on the west side of the Willamette River. The corridor already experiences long traffic queues, poor levels of service and significant capacity constraints at key locations. Travel times in the corridor for traffic and bus transit are unreliable due to congestion on Highway 43.

The purpose of the Portland to Lake Oswego Transit Project is to develop transit that meets future travel demand, supports local and regional land use plans, and garners public acceptance and community support; and which will:

- Increase the mobility and accessibility within the geographically constrained Highway 43 Corridor, connecting from the Portland Central City through the Lake Oswego Town Center.
- Minimize traffic and parking-related impacts to neighborhoods.
- Support and enhance existing neighborhood character in an environmentally sensitive manner.
- Cost-effectively increase corridor and system-wide transit ridership.
- Support transit-oriented economic development in Portland and Lake Oswego.
- Improve transportation access to and connectivity among significant destinations and activity centers.
- Increase transportation choices in the corridor, and access for persons with disabilities.
- Integrate effectively with other transportation modes.
- Anticipate future needs and impacts and not preclude future expansion opportunities.

The project's purpose and need statement will be finalized, using agency and public review and comment.

The environmental process: In accordance with NEPA, SAFETEA–LU Section 6002, and FTA's Section 5309 New Starts requirements, the project's environmental process has been divided into three general phases: Scoping; Alternatives Analysis/Draft EIS and selection of the Locally Preferred Alternative (LPA); and Final EIS.

(1) *Scoping:* Metro and FTA will use the scoping process to identify participating agencies, and to develop, with the review and comment of participating agencies and the public: (a) The project's purpose and need, (b) the range of alternatives to be studied in the Alternatives Analysis/Draft EIS, and (c) the evaluation methodology, including a determination of the scope of the environmental analysis to be conducted for the EIS. The scoping process will include a public process that will include a variety of public and agency meetings, workshops, open houses, and comment opportunities. Metro will create and implement a comprehensive public involvement program and a public and agency involvement Coordination and Communication Plan. The coordination plan will be posted on the project Web site at the end of the scoping process. The public involvement program will include: outreach to local and county officials and community and civic groups; periodic meetings with various local agencies, organizations, and committees; a public hearing after release of the Draft EIS; and distribution of project newsletters and other information pieces.

(2) *Alternatives Analysis/Draft EIS:* During this phase, Metro and FTA will analyze and document the environmental benefits, costs, and impacts of the alternatives that were selected for further study as a result of the scoping process. This will build on the 2005–07 Lake Oswego to Portland Transit and Trail Study alternatives analysis to the extent appropriate. Also, the Alternatives Analysis FTA requires for New Starts and Small Starts projects will be completed. Metro and FTA will publish a Draft EIS documenting the alternatives analysis, evaluation of alternatives and the environmental evaluations required by NEPA during this phase. Following a formal public hearing on the Alternatives Analysis/Draft EIS and consideration of the comments received, this phase will conclude with selection of the locally preferred alternative, with public and participating agency input, by the Metro Council; the cities of Lake Oswego and Portland; Clackamas and Multnomah counties; ODOT; and TriMet.

(3) *Final EIS:* In preparing the Final EIS, further study necessary to respond to comments on the Draft EIS will be conducted, responses to all comments received will be prepared, and feasible and prudent mitigation identified in the Draft EIS for all adverse environmental

and community impacts will be further designed and committed to.

Proposed alternatives: Metro expects to analyze a no-build alternative and two build alternatives. Prior to beginning formal EIS analysis, a Johns Landing refinement plan will be undertaken to define alignments for streetcar in the John's Landing area of the City of Portland, using all or parts of the Willamette Shore Line right-of-way, SW Macadam Avenue, Johns Landing Master Plan alignment or combinations thereof. As defined by the Metro Council in Resolution No. 07–3887a adopted December 2007, the build alternatives are as follows: (1) *A Streetcar mode*, because among transit alternatives studied to date, Streetcar operation in a significant percentage of exclusive right-of-way (the Willamette Shore Line) has the highest forecast ridership, significantly faster travel times between key corridor destinations, and greater reliability. In peak travel periods, the Streetcar would provide faster travel times than autos between downtown and Lake Oswego. Faster travel time and higher reliability is gained through operation of streetcar in a significant percentage of exclusive right of way on the Willamette Shore Line. Streetcar would also have the lowest operating and maintenance costs of any alternative, including the No-Build. Streetcar development could leverage up to 3.3 million square feet of total new transit supportive development in Lake Oswego and Johns Landing. Streetcar would operate as an extension of the existing streetcar line that operates between NW 23rd Avenue and the South Waterfront. (2) *Enhanced Bus Mode*, because this would avoid the property impacts of the previously studied Bus Rapid Transit alternative while still providing improved service, bus pullouts, and better shelters and lighting at stations. Enhanced bus would operate in mixed traffic, which has implications for travel time, reliability and long-term efficiency of the line. Enhanced bus would serve as the base case for comparison of Streetcar alternatives in the EIS. The EIS will also include a no-build alternative. Metro will consider any additional reasonable transit alternatives identified during scoping that provide similar transportation benefits while reducing or avoiding adverse impacts.

Probable effects: NEPA requires Metro and FTA to evaluate, in a public setting, the significant impacts of the alternatives selected for study in the Draft EIS. Areas of investigation include, but are not limited to, land use, development potential, land acquisition and displacements, historic resources, visual and aesthetic qualities, air quality, noise and vibration, energy use, safety and security, and ecosystems, including threatened and endangered species. The impacts will be evaluated for both the construction period and for the long-term period of operation. Measures to mitigate adverse impacts will be developed. Comments on potentially significant environmental impacts that may be associated with the proposed project and alternatives are welcomed.

In accordance with FTA policy and regulations, Metro and FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the regulations of the Council on Environmental Quality and FTA implementing NEPA (40 CFR parts 1500–1508, and 23 CFR Part 771), the project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93), the Section 404(b)(1) guidelines of EPA (40 CFR part 230), the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR Part 800), the regulation implementing section 7 of the Endangered Species Act (50 CFR part 402), Section 4(f) of the DOT Act (23 CFR 771.135), and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

R.F. Krochalis,

Regional Administrator, Region 10, Federal Transit Administration.

[FR Doc. E8–8189 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of a previously approved information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 22, 2008 [73 FR 3800–3801].

DATES: Comments must be submitted on or before May 16, 2008.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath at the National Highway Traffic Safety Administration, Office of the Chief Information Officer, Room W51–204, 1200 New Jersey Ave., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Generic Clearance for Customer Surveys.

OMB Number: 2127–0579.

Type of Request: Extension of a currently approved information collection.

Abstract: Executive Order 12862 mandates that agencies survey their customers to identify the kind and quality of services they want and their level of satisfaction with existing services. Other requirements include the Governmental Performance and Results Act (GPRA) of 1993 which promotes a new focus on results, service quality, and customer satisfaction. NHTSA will use surveys of the public and other external stakeholders to gather data as one input to decision-making on how to better meet the goal of improving safety on the nation's highways. The data gathered on public expectations, NHTSA's products and services, along with specific information on motor vehicle crash related issues, will be used by the agency to better structure its processes and products, forecast safety trends and achieve the agency's goals.

Affected Public: Individuals or households are primary survey respondents. Businesses or other for-profit organizations, not-for-profit institutions, Federal agencies, and State, local or tribal governments are other possible survey respondents.

Estimated Total Annual Burden: 13,468.

Addresses: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* NHTSA Desk Officer.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of

the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 10, 2008.

Margaret O'Brien,

Chief Information Officer.

[FR Doc. E8–8102 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0073]

Mosler Automotive; Grant of Application for a Temporary Exemption From Advanced Air Bag Requirements of FMVSS No. 208

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

ACTION: Notice of grant of petition for temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: This notice grants the petition of Mosler Automotive (Mosler) for a temporary exemption from certain air bag requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, for the Mosler MT900 for the requested period of thirty months. In accordance with 49 CFR Part 555, the basis for the grant is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard, and the exemption would have a negligible impact on motor vehicle safety.

This action follows our publication in the **Federal Register** of a document announcing receipt of Mosler's application and soliciting public comments.

DATES: The exemption is effective immediately and remains in effect until May 16, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Glancy or Mr. Ari Scott, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags" (see 65 FR 30680). The upgrade was designed to meet the goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The advanced air bag requirements were a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats. The new requirements were phased in beginning with the 2004 model year.

Small volume manufacturers were not subject to the advanced air bag requirements until September 1, 2006, but their efforts to bring their respective vehicles into compliance with these requirements began several years before that. However, because the new requirements were challenging, major air bag suppliers have concentrated their efforts on working with large volume manufacturers, and thus, until recently, small volume manufacturers had limited access to advanced air bag technology. Because of the nature of the requirements for protecting out-of-position occupants, "off-the-shelf" systems could not be readily adopted. Further complicating matters, because small volume manufacturers build so few vehicles, the costs of developing custom advanced air bag systems compared to potential profits discouraged some air bag suppliers from working with small volume manufacturers.

The agency has carefully tracked occupant fatalities resulting from air bag deployment. Our data indicate that the agency's efforts in the area of consumer education and manufacturers providing depowered air bags were successful in reducing air bag fatalities even before advanced air bag requirements were implemented.

As always, we are concerned about the potential safety implication of any temporary exemptions granted by this agency. In the present case, we are addressing a petition for a temporary exemption from the advanced air bag requirements submitted by a manufacturer of a high-performance sports car.

II. Statutory Background for Economic Hardship Exemptions

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not include any provision indicating that a manufacturer might have substantial responsibility as a manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of "manufacturer" (49 U.S.C. 30102) to be sufficiently broad to include sponsors. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if, as the first manufacturer, they had a substantial role in the development and manufacturing process of that vehicle.

Finally, while 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis," [1] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's on-going good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

III. Petition of Mosler and Notice of Receipt

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Mosler has petitioned the agency for a temporary exemption from certain advanced air bag requirements of

[1] 49 U.S.C. 30113(b)(1).

FMVSS No. 208. The basis for the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. A notice of receipt of this petition was published in the **Federal Register** on June 12, 2007 (72 FR 32392).

Mosler is a U.S. company, organized as a Florida corporation in 1987 and owned by a single American shareholder. Mosler began production in 1998 of high performance sports cars based on an aluminum honeycomb monocoque chassis. This application concerns the MT900 (Model Year 2004, currently the company's only model), which is expected to retail for $189,900. To date, the MT900 has been in and out of production, with the following numbers of vehicles being produced over the past three years: 12 vehicles in 2004; 8 vehicles in 2005; and 13 vehicles in 2006. Worldwide sales, as of the time of the petition, were 10 race cars, 3 U.S. street cars, and 8 European specification cars. Mosler is requesting an exemption for the MT900 from all of the advanced air bag requirements in S14 of FMVSS No. 208 (we are treating this as a request for an exemption from S14.5.2, Rigid barrier unbelted test), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23) and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25).

Mosler stated its intention to have its advanced air bag system ready approximately two and a half years from the date of the petition. Accordingly, the company seeks an exemption from the above-specified requirements of FMVSS No. 208 for a period of two and one half years (thirty months).

IV. Agency Analysis of Mosler's Petition

Because no comments were received in response to the notice of receipt of Mosler's petition, the agency has based its decision on the arguments and facts put forth in the petition, and on its own expertise.

a. Eligibility

In order to be eligible for an exemption based on economic hardship, a company must submit information on the requirements put forth in 49 CFR 555.6(a). Among other things, the manufacturer must state how failure to acquire an exemption would cause economic hardship and the itemized estimated cost to comply with the standard. Additionally, it must provide a description of efforts to comply with the requirement and the estimated date by which compliance will be met (or production of the noncomforming vehicle will cease). Finally, the manufacturer must state the total number of vehicles produced by or on behalf of the manufacturer during the 12-month period prior to the petition, which is not to exceed 10,000. As stated in the notice of receipt of petition, Mosler has presented adequate information in order to be eligible to be considered for an exemption.

As discussed in the petition, Mosler is independently owned by a single American shareholder. The entire organization currently employs 25 people in the U.S. No other vehicle manufacturer has an ownership interest in Mosler. Mosler is an independent automobile manufacturer which does not have any common control nor is otherwise affiliated with any other vehicle manufacturer.

The company is a small volume manufacturer whose total production has ranged from 8 to 13 vehicles per year over the period from 2004 to 2006. According to its current forecasts, Mosler anticipates that approximately 75 vehicles would be sold in the U.S. during the period of its requested exemption, if its request were granted.

b. Economic Hardship

Publicly available information and also the financial documents submitted to NHTSA by the petitioner indicate that the company will suffer substantial financial losses unless Mosler obtains a temporary exemption from the advanced air bag requirements. According to the petition, the company has determined that it cannot finance the work necessary to develop and install advanced air bags in its vehicles unless U.S. sales continue. It argued that NHTSA has previously "confirmed the appropriateness of an exemption when the sales of exempted vehicles generate income to fund air bag development expenditures in order to comply with Standard 208 at the end of the exemption period. 64 FR 6736." Mosler stated that it "therefore needs USA exempted-vehicle sales to 'bridge the gap,'" until fully compliant vehicles can be funded, developed, tooled, and introduced for the U.S. market. The petitioner further stated that it "will suffer a significant market loss—the US—in the event it does not receive the exemption."

The petitioner argued that it tried in good faith, but could not bring the vehicle into compliance with the advanced air bag requirements, and would incur substantial economic hardship if it cannot sell vehicles in the U.S. Mosler has an extremely long product cycle (for the MT900, the company estimates a lifespan of 11 years), which has thus far prevented it from recouping its $600,000 investment in its current standard air bag occupant restraint system. Over the period 2004–2006, Mosler has had net operational losses totaling over $3 million, and the retained deficit of the company exceeds over $23 million. The petitioner stated that significant engineering and funding will be necessary to upgrade to an advanced air bag system, and that the projected overall cost of approximately $2.0 to $2.5 million is beyond the company's current capabilities given its current financial condition. The company has stated that it cannot hope to attain profitability if it incurs additional research and development expenses at this time.

Mosler stated that the estimated $2.0 to $2.5 million in costs associated with advanced air bag engineering and development included research and development, testing, tooling, and test vehicles, as well as internal costs. In its petition, Mosler reasoned that sales in the U.S. market must commence in order to finance this work and that non-U.S. sales alone cannot generate sufficient income for this purpose.

If the exemption is denied, Mosler projects a net loss of over $3 million during the period from 2007–2009. However, if the petition is granted, the company anticipates a profit of nearly $6.4 million during that same period. The petitioner argued that a denial of this petition could preclude financing of the project for U.S.-compliant vehicles, a development which would have a highly adverse impact on the company.

Upon review of the financial information submitted by Mosler, the agency has concluded that the company is undergoing significant economic hardship. Our review of documentation provided by Mosler indicates that Mosler has been and continues to operate at a substantial loss, and requires significant ongoing infusions of investor capital in order to stay solvent. NHTSA agrees with Mosler's statement that without the income generated by U.S. sales, it will not have the resources required to develop an air bag that is compliant with the advanced air bag requirements.

c. Good Faith Efforts To Comply

Mosler began production of the latest version of the MT900 in 2004, at which time it was certified for U.S. road use.

The company has invested over $23 million on research and development and tooling for the MT900 program. This included $600,000 to re-engineer the MT900 to include a standard air bag system, which it intended to develop into an advanced air bag system. In that time, the company was able to bring the vehicle into compliance with all applicable NHTSA regulations, except for the advanced air bag provisions of FMVSS No. 208.

According to its petition, even though advanced air bags are beyond its current capabilities, Mosler is nonetheless planning for the introduction of these devices. The company stated that Siemens Restraint Systems GmbH will spearhead this effort, and current plans estimate a cost of between $2.0 and $2.5 million (excluding internal costs) and a minimum lead time of 24 months for the advanced air bag project. Mosler stated that the following engineering efforts are needed to upgrade the MT900's standard air bag system to an advanced air bag system: (1) Tooling for prototypes and production vehicles; (2) contractor engineering; (3) air bag system materials; (4) cost of test vehicles; (5) integration of air bag electronics; (6) radio frequency interference/electromagnetic compatibility testing; (7) significant design and development of interior components including seats and dashboard; (8) crash testing; and (9) system validation. In past reviews of petitions for exemption of advanced air bag systems, NHTSA has noted that OEM supplier quotes provided by Siemens to other small vehicle manufacturers, plus those manufacturers' internal development costs, have been in the range of $2 to $4 million. The program costs cited by Mosler, therefore, are consistent with previous submissions.

In addition, Mosler emphasized that finding suppliers willing to work with a manufacturer with very low production volumes has proven extremely difficult, and as a result, the company must wait for technology to "trickle down" from larger manufacturers and suppliers. Mosler further stated that, as a small volume manufacturer, the company simply does not have the internal resources to do full U.S. homologation projects without reliance on outside suppliers of advanced engineering technologies. We note that NHTSA has cited this argument previously when granting petitions for exemption from the advanced air bag requirements to other small vehicle manufacturers. *See* Koenigsegg, 72 FR 17608.

In short, Mosler argued that, despite good faith efforts, limited resources prevent it from bringing the vehicle into compliance with all applicable requirements, and it is beyond the company's current capabilities to bring the vehicle into full compliance until such time as additional resources become available as a result of U.S. sales. Mosler stated in its petition that it expects its advanced air bag system to be ready by the end of the requested exemption period, and that an exemption would allow it to maintain continued operations until then.

d. Public Interest Considerations

The petitioner put forth several arguments in favor of a finding that the requested exemption is consistent with the public interest and would not have a significant adverse impact on safety. Specifically, Mosler argued that the vehicle would be equipped with a fully compliant standard U.S. air bag system (*i.e.*, one meeting all requirements of FMVSS No. 208 prior to implementation of S14). Furthermore, the company emphasized that the MT900 will comply with all other applicable FMVSSs.

NHTSA agrees that granting the exemption will benefit U.S. employment, companies, and citizens, because Mosler is a U.S. company and employs 25 people at its Florida facility. Mosler also argued that denial of the exemption request would have an adverse impact on consumer choice. The agency also agrees that an exemption is unlikely to have a significant safety impact because these vehicles are not expected to be used extensively by their owners, due to their "second vehicle" nature, extreme design and high cost. Given the nature of the vehicle, it is less likely to be used to transport young children than most other vehicles.

As an additional basis for showing that its requested exemption would be in the public interest, Mosler stated that the MT900 has an extremely strong chassis, which is composed of aluminum tubes and composite structural parts. According to Mosler, the vehicle design is such that occupants are effectively placed in a "protective 'cell'" with the chassis structure built around them. The petitioner asserts that this rigid "monocoque" structure stays firm during impact, providing a hard frame and resisting intrusion into the passenger compartment.

V. Summary

In conclusion, we are granting the Mosler petition to be exempted from portions of the advanced air bag regulation required by FMVSS No. 208. Specifically, Mosler is exempted from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption does not extend to the provision requiring a 50th percentile male barrier impact test (S14.5.1(a)). In addition to certifying compliance with S14.5.1(a), Mosler must continue to certify to the unbelted 50th percentile barrier impact test in force prior to September 1, 2006 (S5.1.2(a)(1)). We note that the unbelted sled test in S13 is an acceptable option for that requirement. The agency's rationale for this decision is as follows.

The advanced air bag requirements present a substantial challenge due to the high cost of development for advanced air bags and the extremely low production numbers of the Mosler automobiles. Because Mosler produces only a handful of vehicles for sale, the estimated $2.0 to $2.5 million in development costs represents a significant sum on a cost-per-vehicle basis. Mosler's financial disclosures support its assertion that without the revenue generated by U.S. sales, Mosler will not be able to finance the development of a compliant advanced air bag system.

Based upon the information provided by the petitioner, we understand that Mosler made good faith efforts to bring the MT900 into compliance with the applicable requirements until such time as it became apparent that there was no practicable way to do so. As a small specialty manufacturer, the company had a difficult time in gaining access to advanced air bag systems and components (which reflects restraint system suppliers' initial focus on meeting the needs of large volume manufacturers). Additionally, small manufacturers must amortize the development costs of advanced air bags into a much smaller number of produced vehicles, resulting in significantly higher per-vehicle costs. Because Mosler is an independent automobile manufacturer, there was no possibility of technology transfer from a larger parent company that also manufactures motor vehicles. Consequently, given Mosler's dependence on investor capital in order to sustain operations, the financial hardship is particularly acute.

Furthermore, we note that Mosler made several arguments as to the public interest considerations in granting the exemption. First, we note that there will be a limited effect on safety due to this exemption. This is because the MT900 will continue to be equipped with a standard air bag system, fewer than 100 vehicles are expected to be produced during the period of the exemption, and

the MT900 is utilized as a "second vehicle," due to its extreme design and high cost, and therefore driven a limited amount and generally without child occupants. Second, we believe that allowing production of the MT900 will help further consumer choice, as well as help to preserve the jobs of Mosler's 25 U.S. based employees.

VI. Issuance of Notice of Final Action

In sum, the agency concludes that Mosler has demonstrated good faith effort to bring the MT900 into compliance with the advanced air bag requirements of FMVSS No. 208 and has also demonstrated the requisite financial hardship. Further, we find these exemptions to be in the public interest.

In consideration of the foregoing, we conclude that compliance with the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection*, would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further conclude that granting of an exemption from these provisions would be in the public interest and consistent with the objectives of traffic safety.

We note that, as explained below, prospective purchasers will be notified that the vehicle is exempted from the specified advanced air bag requirements of Standard No. 208. Under § 555.9(b), a manufacturer of an exempted passenger car must affix securely to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable Federal motor vehicle safety standards in effect on the date of manufacture "except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No._____" This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

We note that the text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations where an exemption covers part but not all of a Federal motor vehicle safety standard. Specifically in the case of FMVSS No. 208, we believe that a statement that the vehicle has been exempted from Standard No. 208 generally, without an indication that the exemption is limited to the specified advanced air bag provisions, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of Standard No. 208's requirements. Moreover, we believe that the addition of a reference to such provisions by number without an indication of its subject matter would be of little use to consumers, since they would not know the subject of those specific provisions. For these reasons, we believe the two labels should read in relevant part, "except for S14.5.2, S15, S17, S19, S21, S23, and S25 (Advanced Air Bag Requirements) of Standard No. 208, Occupant Crash Protection, exempted pursuant to * * *." We note that the phrase "Advanced Air Bag Requirements" is an abbreviated form of the title of S14 of Standard No. 208.

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), the Mosler MT900 is granted NHTSA Temporary Exemption No. EX 08–02, from S14.5.2, S15, S17, S19, S21, S23, and S25 of 49 CFR 571.208. The exemption is effective immediately and continues in effect for thirty months.

Issued on: April 9, 2008.

James F. Ports, Jr.,

Deputy Administrator.

[FR Doc. E8–8101 Filed 4–15–08; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–43 (Sub-No. 183X)]

Illinois Central Railroad Company—Abandonment Exemption—in Dyer County, TN

Illinois Central Railroad Company (IC) [1] has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.01-mile line of railroad between milepost 48.51 and milepost 47.50 in Dyersburg, Dyer County, TN. The line traverses United States Postal Service Zip Code 38024.

IC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 16, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 28, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 6, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IC's representative: Thomas J. Healey, 17641 S. Ashland Avenue, Homewood, IL, 60430–1345.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

IC has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 21, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

[1] IC is a wholly owned subsidiary of Canadian National Railway Company.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), IC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by IC's filing of a notice of consummation by April 16, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 9, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–7965 Filed 4–15–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35106]

United States Department of Energy—Rail Construction and Operation—Caliente Rail Line in Lincoln, Nye, and Esmeralda Counties, NV

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Construction and Operation Application and Adoption of Procedural Schedule.

SUMMARY: The Board is publishing notice of an application filed by the United States Department of Energy (DOE) seeking authority to construct and operate an approximately 300-mile rail line, to be known as the Caliente Line, connecting an existing Union Pacific Railroad Company line near Caliente, NV, to a proposed geologic repository at Yucca Mountain, Nye County, NV. The purpose of this proposed rail line is to allow DOE to transport spent nuclear fuel and high-level radioactive waste for disposal at the proposed geologic repository, as well as to provide common carrier rail service to communities situated along the proposed line.

The Board, on its own motion, is adopting a procedural schedule that calls for notices of intent to participate and establishes filing dates for submissions on whether this application meets the criteria of 49 U.S.C. 10901.

DATES: This notice is effective on April 16, 2008. Pleadings must be filed in accordance with the schedule set forth in the Appendix to this notice. All filings, except notices of intent to participate, must be concurrently served on all parties of record and must be accompanied by a certificate of service.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions found on the Board's Web site at *www.stb.dot.gov* at the "E–FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an electronic version) to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be sent (and may be sent by e-mail only if service by e-mail is acceptable to the recipient) to each of the following: (1) Director, Office of Civilian Radioactive Waste Management, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; (2) Director, Office of Logistics Management, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; (3) Assistant General Counsel for Civilian Nuclear Programs, ATTN: Bradley L. Levine, GC–52, United States Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; and (4) any other person designated as a party of record on the service list notice described below.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: The Board's review of construction applications is governed by 49 U.S.C. 10901 and by the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370d (NEPA), and related environmental laws. Section 10901 requires the Board to grant a construction application unless the Board finds that the proposal is inconsistent with the public convenience and necessity. Under our regulations, comments on DOE's application are due 35 days after its March 17, 2008 filing date, and DOE's reply is due 5 days after the comments are due. *See* 49 CFR 1150.10(g) and (h). However, because the application is extensive, replies might be lengthy, and the proceeding might be controversial, we find that the standard timetable is not appropriate in this proceeding. Accordingly, to guide the submission of filings on the merits of the application, we will adopt a procedural schedule similar to the one used in a recent proceeding involving a voluminous and controversial construction application, *Tongue River Railroad Company, Inc.—Construction and Operation—Western Alignment*, STB Finance Docket No. 30186 (Sub-No. 3). The schedule for the DOE proceeding, which is set forth in the Appendix, will accord all parties due process because it provides ample time and opportunity for the submission of comments and replies. The schedule will also better enable the Board to determine whether the proposed construction meets the criteria of section 10901.

DOE has caused notices to be published stating that comments on the application are due on or before April 21, 2008, as ordinarily required by our rules. While interested parties may continue to file comments by April 21, 2008, the parties may also file comments pursuant to the longer time frames in the procedural schedule we establish here. To alert the parties of the new schedule, we will require DOE to cause this notice to be published in the same places as the prior notices and to certify to the Board that it has done so.

Any person who wishes to participate as a party of record in this proceeding by filing comments and by receiving other parties' pleadings must file with the Acting Secretary of the Board an original and 10 copies of a notice of intent to participate in accordance with the attached procedural schedule. In order to facilitate service of pleadings on parties of record, the Board will issue a list of those persons who have given notice of their intent to participate. However, an interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. The primary application and other filings in this proceeding will also be available on the Board's Web site at *http://www.stb.dot.gov* under "E–LIBRARY/Filings." Additionally, electronic copies of the application are available from DOE online at *http://www.ocrwm.doe.gov.*

On April 2, 2008, the State of Nevada filed a motion asking the Board to reject the application, or in the alternative, to make replies to the application due after the applicant has supplemented the record. DOE's reply to this motion is due by April 22, 2008. We will address the State's motion and any reply in a

later decision.[1] Our issuing this notice now does not constitute a determination as to whether DOE's application is complete or otherwise prejudge the State's motion. We will modify the schedule, if necessary, as a result of our subsequent ruling on the State's motion.

The environmental review related to the proposed construction and operation of a rail line to Yucca Mountain began in 2004 and is well underway. In 2004, the Board accepted DOE's invitation to participate as a "cooperating agency" under the President's Council on Environmental Quality regulations at 40 CFR 1501.6 to give DOE the benefit of the Board's expertise in freight rail transportation in the preparation of Environmental Impact Statements (EISs) addressing a potential Nevada rail transportation corridor and alternative rail alignments. DOE was also aware when it asked the Board to become a cooperating agency that the Board would have jurisdiction over the proposed new rail line in the event DOE were to decide to have the proposed line operated as a common carrier rail line. (The cooperating agency process is intended to make environmental review under NEPA more efficient by giving all agencies with licensing authority over a project the environmental information they need to comply with NEPA and related environmental laws in undertaking their decisionmaking.)

The Board's Section of Environmental Analysis (SEA) and the other cooperating agencies on the Nevada rail corridor and rail alignment EISs (the Bureau of Land Management and United States Air Force) have participated in every step of the EIS process. The Draft EISs were issued for public review and comment in October 2007 in *Draft Environmental Impact Statement for a Rail Alignment for the Construction and Operation of a Railroad in Nevada to a Geologic Repository at Yucca Mountain, Nye County, Nevada* (DOE/EIS–03691) and in *Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada—Nevada Rail Transportation Corridor* (DOE/EIS–0250F–S2D). DOE has made electronic copies of the Draft EISs addressing the Nevada rail corridor and alternative rail alignments available at *http://www.ocrwm.doe.gov.*

SEA participated in the public hearings that were held on the Draft EISs in November and December 2007. Following the close of the comment period in January 2008, preparation of Final EISs addressing the Nevada rail corridor and alternative rail alignments began. DOE estimates that it will issue the Final EISs in June 2008. The EISs (including the public comments) will serve as the basis for SEA's recommendations to the Board regarding whether, from an environmental perspective, DOE's construction and operation application should be granted, denied, or granted with environmental conditions.

The Board has not participated in the ongoing EIS process for the proposed geologic repository that the proposed new line would serve.

The Board will take into consideration both the transportation merits and the environmental impacts of constructing and operating the proposed line when ruling on DOE's application.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 10, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

Appendix

Procedural Schedule on the Merits

April 16, 2008—Publication of notice adopting procedural schedule.

April 28, 2008—Due date for certification by DOE that it has published newspaper notices announcing this procedural schedule.

May 7, 2008—Due date for notices of intent to participate as a party of record.

July 15, 2008—Due date for comments in support of or opposition to the application.

August 29, 2008—Due date for DOE's reply.

[FR Doc. E8–8161 Filed 4–15–08; 8:45 am]

BILLING CODE 4915–01–P

[1] On April 8, 2008, Nevada Central Railroad filed a notice stating that it intends to participate in this proceeding and that it also plans to file a motion to reject the application.

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption of 12 Percent Treasury Bonds of 2008–13

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: As of April 15, 2008, the Secretary of the Treasury gives public notice that all outstanding 12 percent Treasury Bonds of 2008–13 (CUSIP No. 912810 DF 2) dated August 15, 1983, due August 15, 2013, are called for redemption at par on August 15, 2008, on which date interest on such bonds will cease.

DATES: Treasury calls such bonds for redemption on August 15, 2008.

FOR FURTHER INFORMATION CONTACT: Definitives Section, Customer Service Branch 3, Office of Retail Securities, Bureau of the Public Debt, (304) 480–7711.

SUPPLEMENTARY INFORMATION:

1. *Bonds Held in Registered Form.* Owners of such bonds held in registered form should mail bonds for redemption directly to: Bureau of the Public Debt, Definitives Section, Customer Service Branch 3, P.O. Box 426, Parkersburg, WV 26106–0426. Owners of such bonds will find further information regarding how owners must present and surrender such bonds for redemption under this call, in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR Part 306); by contacting the Definitives Section, Customer Service Branch 3, Office of Retail Securities, Bureau of the Public Debt, telephone number (304) 480–7711; and by going to the Bureau of the Public Debt's Web site, *http://www.treasurydirect.gov.*

2. *Bonds Held in Book-Entry Form.* Treasury automatically will make redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in Treasury Direct accounts, on August 15, 2008.

Gary Grippo,

Acting Fiscal Assistant Secretary.

[FR Doc. E8–7945 Filed 4–15–08; 8:45 am]

BILLING CODE 4810–40–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

IRS/VA FFRDC Co-Sponsorship

AGENCY: Internal Revenue Service (IRS), Treasury. National Office Procurement.

ACTION: Notice.

SUMMARY: The Internal Revenue Service (IRS) and The Department of Veterans Affairs (VA) executed a Memorandum of Understanding (MOU) on February 7, 2008 to designate VA as a Co-Sponsor of the Federally Funded Research and Development Center (FFRDC), titled The Center for Enterprise Modernization (CEM). CEM is operated by The MITRE Corporation (MITRE). IRS remains the

primary sponsor of this enterprise systems engineering and integration FFRDC; VA is a Co-Sponsor.

VA has determined that it requires an FFRDC mission partner to assist in the achievement of its strategic and business enterprise modernization goals and the IRS FFRDC meets this need.

DATES: The Agency must receive comments on or before May 16, 2008.

ADDRESSES: Comments may be submitted by one of the following methods: Mail to: 6009 Oxon Hill Road, Suite 500, Oxon Hill, MD, attn: Carol Gentry, subject: Co-Sponsor Comments or e-mail to *Carol.A.Gentry@irs.gov*, subject: Co-Sponsor Comments.

FOR FURTHER INFORMATION CONTACT: For further information contact Carol Gentry at *Carol.A.Gentry@irs.gov*.

Carol A. Gentry,

Contracting Officer, Internal Revenue Service.

[FR Doc. E8–8173 Filed 4–15–08; 8:45 am]

BILLING CODE 4830–01–M

Federal Register

Wednesday,
April 16, 2008

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

Federal Railroad Administration

49 CFR Parts 172, 174, and 209

Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments; Railroad Safety Enforcement Procedures; Interim Final Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172 and 174

[Docket No. PHMSA–RSPA–2004–18730] [1]

RIN 2137–AE02

Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: ThePipeline and Hazardous Materials Safety Administration, in coordination with the Federal Railroad Administration and the Transportation Security Administration, is revising the current requirements in the Hazardous Materials Regulations applicable to the safe and secure transportation of hazardous materials transported in commerce by rail. This interim final rule fulfills requirements in Section 1551 of the Implementing Recommendations of the 9/11 Commission Act of 2007.

In this interim final rule, we are requiring rail carriers to compile annual data on certain shipments of explosive, toxic by inhalation, and radioactive materials, use the data to analyze safety and security risks along rail routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. We are also clarifying rail carriers' responsibility to address in their security plans issues related to en route storage and delays in transit. In addition, we are adopting a new requirement for rail carriers to inspect placarded hazardous materials rail cars for signs of tampering or suspicious items, including improvised explosive devices.

DATES: This interim final rule is effective June 1, 2008.

Voluntary Compliance Date: Voluntary compliance is authorized as of May 16, 2008.

Comments: Comments must be received by May 16, 2008.

ADDRESSES: You may submit comments identified by the docket number PHMSA–RSPA–2004–18730 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this rule. Note that all comments received will be posted without change, including any personal information provided. Please see the Privacy Act section of the preamble.

FOR FURTHER INFORMATION CONTACT: William Schoonover, (202) 493–6229, Office of Safety Assurance and Compliance, Federal Railroad Administration; or Susan Gorsky or Ben Supko, (202) 366–8553, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration.

SUPPLEMENTARY INFORMATION:

I. Background

Hazardous materials are essential to the economy of the United States and the well being of its people. Hazardous materials fuel motor vehicles, purify drinking water, and heat and cool homes and offices. They are used for farming and medical applications, and in manufacturing, mining, and other industrial processes. Railroads annually carry over 1.7 million shipments of hazardous materials including explosive, poisonous, corrosive, flammable and radioactive materials. As common carriers, railroads are obligated to accept hazardous cargo that is tendered in compliance with legal requirements, whether or not they would choose to do so for business reasons. This common carrier obligation ensures that offerors are given the opportunity to ship hazardous materials, including the most dangerous hazardous materials, in the safest, most secure manner possible.

The need for hazardous materials to support essential services means transportation of hazardous materials is unavoidable. However, these shipments frequently move through densely-populated or environmentally-sensitive areas where the consequences of an incident could be loss of life, serious injury, property damage, and/or significant environmental damage.

The same characteristics of hazardous materials that cause concern in the event of an accidental release also make them attractive targets for terrorism or sabotage. Hazardous materials in transportation are frequently transported in substantial quantities and are potentially vulnerable to sabotage or misuse. Such materials are already mobile and are frequently transported in proximity to large population centers. Further, security of hazardous materials in the transportation environment poses unique challenges as compared to security at fixed facilities. Finally, hazardous materials in transportation often bear clear identifiers to ensure their safe and appropriate handling during transportation and to facilitate identification and effective emergency response in the event of an accident or release; these identifiers may also identify hazardous materials shipments as targets of opportunity for terrorists or other criminals.

A primary safety and security concern related to the rail transportation of hazardous materials is the prevention of catastrophic release or explosion in proximity to densely populated areas, including urban areas and events or venues with large numbers of people in attendance. Also of major concern is the release or explosion of rail cars in close proximity to iconic buildings, landmarks, or environmentally significant areas. Such a catastrophic event could be the result of an accident—such as the January 6, 2005 derailment and release of chlorine in Graniteville, South Carolina, which resulted in 9 fatalities and 554 injuries—or a deliberate act of terrorism. The causes of intentional and unintentional releases of hazardous material are very different; however, in either case, the potential consequences of both releases are significant. Indeed, the consequences of an intentional release of hazardous material by a criminal or terrorist action are likely to be more severe than the consequences of an unintentional release because an intentional action is designed to inflict the most damage possible.

DHS is the lead agency for transportation security and has shared responsibility with DOT for hazardous materials transportation security. DOT consults and coordinates on security-related hazardous materials transportation requirements to ensure they are consistent with DHS's overall security policy goals. Both departments

[1] This rulemaking was formerly designated as HM–232E; however, with the transition to a new government-wide regulations portal, docket number nomenclature has since changed. Some references to the old docket number are still present in this document.

work to ensure that the regulated industry is not confronted with inconsistent security guidance or requirements promulgated by the government.

The Federal Hazardous Materials Transportation Law (Federal Hazmat Law, 49 U.S.C. 5101 *et seq.*), authorizes the Secretary of the Department of Transportation to "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." The Secretary has delegated this authority to the Pipeline and Hazardous Materials Safety Administration (PHMSA). The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180), promulgated by PHMSA under the mandate in section 5103(b), govern safety aspects, including security, of the transportation of hazardous material. In accordance with its security authority, in March 2003, PHMSA adopted new transportation security requirements for offerors and transporters of certain classes and quantities of hazardous materials and new security training requirements for hazardous materials employees. 68 FR 14509 (March 25, 2003). These security regulations, which are explained in more detail below, require offerors and carriers to develop and implement security plans and to train their employees to recognize and respond to possible security threats.

When PHMSA adopted its security regulations, we stated that these regulations were "the first step in what may be a series of rulemakings to address the security of hazardous materials shipments." 68 FR 14511. PHMSA also noted that the Transportation Security Administration (TSA) "is developing regulations that are likely to impose additional requirements beyond those established in this final rule," and stated it would "consult and coordinate with TSA concerning security-related hazardous materials transportation regulations * * *" *Id.*

Under Section 101(a) of the Aviation and Transportation Security Act (ATSA) (codified at 49 U.S.C. 114) and 49 CFR 1502.1, TSA has broad responsibility and authority for "security in all modes of transportation * * *" ATSA authorizes TSA to take immediate action to protect transportation security (49 U.S.C. 114(d)(2)), and to:

—Develop policies, strategies and plans for dealing with threats to transportation (§ 114(f)(3));
—Assess intelligence and other information in order to identify individuals who pose a threat to transportation security (§ 114(f)(1));
—Coordinate countermeasures with other Federal agencies to address such threats (§ 114(f)(4));
—Enforce security-related regulations and requirements (§ 114(f)(7));
—Ensure the adequacy of security measures for the transportation of cargo (§ 114(f)(10));
—Oversee the implementation and ensure the adequacy of security measures at transportation facilities (§ 114(f)(11));
—Carry out other appropriate duties relating to transportation security (§ 114(f)(15)); and
—Serve as the primary liaison for transportation security to the intelligence and law enforcement communities (§ 114(f)(5)).

In sum, TSA's authority with respect to transportation security is comprehensive and supported with specific powers related to the development and enforcement of regulations, security directives, security plans, and other requirements. Accordingly, under this authority, TSA may identify a security threat to any mode of transportation, develop a measure for dealing with that threat, and enforce compliance with that measure.

On August 7, 2006, PHMSA and TSA signed an annex to the September 28, 2004 DOT–DHS Memorandum of Understanding (MOU) on Roles and Responsibilities. The purpose of the annex is to delineate clear lines of authority and responsibility and promote communications, efficiency, and non-duplication of effort through cooperation and collaboration in the area of hazardous materials transportation security based on existing legal authorities and core competencies. Similarly, on September 28, 2006, the Federal Railroad Administration (FRA) and TSA signed an annex to address each agency's roles and responsibilities for rail transportation security. The FRA–TSA annex provides that "DHS holds lead authority, primary responsibility and dedicated resources for security activities in all modes of transportation including rail." Concerning safety, the FRA–TSA annex recognizes that FRA has authority over every area of railroad safety (including security) and that FRA enforces PHMSA's hazardous materials regulations. The FRA–TSA annex includes procedures for coordinating: (1) Planning, inspection, training, and enforcement activities; (2) criticality and vulnerability assessments and security reviews; (3) communicating with affected stakeholders; and (4) use of personnel and resources. Copies of the two annexes are available for review in the public docket for this rulemaking. In accordance with the principles outlined in the PHMSA–TSA and FRA–TSA annexes, PHMSA and FRA collaborated with TSA to develop this interim final rule.

II. Current Hazardous Materials Transportation Safety and Security Requirements

A. The Hazardous Materials Regulations

In accordance with § 172.704(a) of the HMR, all hazardous materials employees (hazmat employees) are required to fulfill the security awareness training, and employees responsible for developing and implementing security plans must also complete in-depth security training. Subpart I of Part 172 of the HMR requires persons who offer certain hazardous materials for transportation or transport certain hazardous materials in commerce to develop and implement security plans. A person is required to develop and implement a security plan if he or she transports any of the following materials in commerce:

(1) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined at 49 CFR 173.403, in a motor vehicle, rail car, or freight container;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) More than one L (1.06 qt) per package of a material poisonous by inhalation, as defined at 49 CFR 171.8, that meets the criteria for Hazard Zone A, as specified in 49 CFR 173.116(a) or 173.133(a);

(4) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to, or greater than, 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight, or more, of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class under the provisions of subpart F of 49 CFR part 172;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention under 42 CFR part 73; or

(7) A quantity of hazardous material that requires placarding under the provisions of subpart F of 49 CFR part 172.

Subpart I of part 172 sets forth general requirements for a security plan's components rather than a prescriptive

list of specific items that must be included. The security plan must include an assessment of possible transportation security risks and appropriate measures to address the assessed risks. Specific measures implemented as part of the plan may vary according to the nature and level of threat at a particular time. At a minimum, the security plan must address personnel security, unauthorized access, and en route security. To address personnel security, the plan must include measures to confirm background information provided by job applicants for positions involving access to and handling of the hazardous materials covered by the plan. To address unauthorized access, the plan must include measures designed to limit or mitigate the risk of unauthorized persons gaining access to materials or transport conveyances being prepared for transportation. To address en route security, the plan must include measures to mitigate security risks during transportation, including the security of shipments stored temporarily en route to their destinations.

Under these standards, security plans can and should differ from one offeror or carrier to another. In each case, the plan should be based on the offeror's or carrier's individualized assessment of the security risks associated with the specific hazardous materials it ships or transports and its unique circumstances and operational environment.

The HMR also contain limited provisions intended to minimize delays in transportation. Pursuant to § 174.14 of the HMR, rail carriers are required to expedite the movement of hazardous materials shipments. Each shipment of hazardous materials must be forwarded "promptly and within 48 hours (Saturdays, Sundays, and holidays excluded)" after acceptance of the shipment by the rail carrier. If only biweekly or weekly service is performed, the carrier must forward a shipment of hazardous materials in the first available train. Additionally, carriers are prohibited from holding, subject to forwarding orders, tank cars loaded with Division 2.1 (flammable gas), Division 2.3 (poisonous gas) or Class 3 (flammable liquid) materials. The purpose of § 174.14 is to help ensure the prompt delivery of hazardous materials shipments and to minimize the time such materials spend in transportation, thus minimizing the exposure of hazmat shipments to accidents, derailments, unintended releases, or tampering.

B. AAR Circular OT–55–I

The rail industry, through the Association of American Railroads (AAR), has developed a detailed protocol on recommended railroad operating practices for the transportation of hazardous materials. These recommended practices were originally implemented by all of the Class 1 rail carriers operating in the United States; short-line railroads are also signatories to the most recent version of this document, known as Circular OT–55–I, issued by AAR on July 17, 2006. The Circular details railroad operating practices for: (1) Designating trains containing (i) five tank car loads or more of poison inhalation hazard (PIH) materials, (ii) 20 or more car loads or intermodal portable tank loads of a combination of PIH, flammable gas, Class 1.1 or 1.2 explosives, and environmentally-sensitive chemicals, or (iii) one or more car loads of spent nuclear fuel or high level radioactive waste as "key trains;" (2) designating operating speed and equipment restrictions for key trains; (3) designating "key routes" for key trains, and setting standards for track inspection and wayside defect detectors; (4) yard operating practices for handling placarded tank cars; (5) storage, loading, unloading and handling of tank cars; (6) assisting communities with emergency response training and information; (7) shipper notification procedures; and (8) the handling of time-sensitive materials.

Circular OT–55–I defines a "key route" as:

> Any track with a combination of 10,000 car loads or intermodal portable tank loads of hazardous materials, or a combination of 4,000 car loadings of PIH (Hazard zone A, B, C, or D), anhydrous ammonia, flammable gas, Class 1.1 or 1.2 explosives, environmentally-sensitive chemicals, Spent Nuclear Fuel (SNF), and High Level Radioactive Waste (HLRW) over a period of one year.

Any route defined by a railroad as a key route should meet certain standards described in OT–55–I. Wayside defective wheel bearing detectors should be placed at a maximum of 40 miles apart, or an equivalent level of protection may be installed based on improvements in technology. Main track on key routes should be inspected by rail defect detection and track geometry inspection cars or by any equivalent level of inspection at least twice each year. Sidings on key routes should be inspected at least once a year, and main track and sidings should have periodic track inspections to identify cracks or breaks in joint bars. Further, any track used for meeting and passing key trains should be FRA Class 2 track or higher. If a meet or pass must occur on less than Class 2 track due to an emergency, one of the trains should be stopped before the other train passes. This interim final rule in part reflects the recommended practices mentioned above, which are already in wide use across the rail industry.

III. Notices of Proposed Rulemaking

On December 21, 2006, PHMSA, in coordination with FRA and TSA, published a notice of proposed rulemaking (NPRM) under Docket HM–232E (71 FR 76834) proposing to revise the current requirements in the HMR applicable to the safe and secure transportation of hazardous materials by rail. Specifically, we proposed to require rail carriers to compile annual data on specified shipments of hazardous materials, use the data to analyze safety and security risks along rail routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. We also proposed clarifications of the current security plan requirements to address en route storage, delays in transit, delivery notification, and additional security inspection requirements for hazardous materials shipments.

Also on December 21, 2006, TSA published an NPRM proposing security regulations that would cover a broader spectrum of rail transportation, including passenger service. (71 FR 76852; see also TSA's Initial Regulatory Flexibility Analysis, 72 FR 7376 [Feb. 15, 2007].) The TSA proposal is intended to reduce security risks associated with certain hazardous materials shipments in designated High Threat Urban Areas (HTUAs) and to raise the overall security baseline for freight railroad shipments. (TSA has identified 46 geographic areas as HTUAs warranting special consideration based on population and risk assessment data. See 71 FR at 76861.) The TSA proposal applies to freight railroad carriers; intercity, commuter, and short-haul passenger trains; rail mass transit systems; and rail operations at certain fixed facilities that ship or receive PIH, explosive, or radioactive materials.

The hazardous materials provisions of the TSA proposal complement and build on the proposals in the PHMSA NPRM. Specifically, TSA proposed to require railroads to designate rail security coordinators to serve as primary contacts for receipt of intelligence information and to require reporting of significant security concerns, potential threats, and incidents. In addition, upon request

from TSA, rail carriers and certain facility operators would be required to report car locations and shipping information for shipments of PIH, explosive, and radioactive materials within one hour of the request. TSA also proposed enhanced chain-of-custody requirements for rail shipments of PIH, explosive, and radioactive materials in HTUAs to ensure that no car is left unattended as it is transferred from shipper to carrier, between carriers, or from carrier to consignee.

To obtain additional public input on our NPRM, PHMSA hosted meetings on February 1, 2007, in Washington, DC, and February 9, 2007, in Dallas, Texas. TSA also held a public meeting on its NPRM on February 2, 2007, in Arlington, Virginia. Thirty-five persons attended the Washington, DC public meeting, and 15 persons attended the Dallas meeting. Records of the public meetings, including attendance lists, transcripts, and a list of questions commenters were asked to address, are available for review in the public docket for this rulemaking.

IV. Implementing Recommendations of the 9/11 Commission Act of 2007

Several weeks after the close of the comment period in this proceeding, Congress enacted the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53; 121 Stat. 266), which the President signed into law on August 3, 2007. Among other requirements, the Act directs the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to publish a final rule based on PHMSA's December 21, 2006 NPRM by May 3, 2008. In accordance with Section 1551(e) of the Act, PHMSA's final rule must require rail carriers of "security-sensitive materials" to "select the safest and most secure route to be used in transporting" those materials, based on the rail carrier's analysis of the safety and security risks on primary and alternate transportation routes over which the carrier has authority to operate. Specifically, the HM–232E final rule must require such rail carriers to perform the following tasks each calendar year:

(1) Collect and compile security-sensitive commodity data, by route, line segment, or series of line segments, as aggregated by the rail carrier and identify the geographic location of the route and the total number of shipments by UN identification number;

(2) Identify practicable alternative routes over which the carrier has authority to operate as compared to the current route for such shipments;

(3) Seek relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to a route used by a rail carrier to transport security-sensitive materials;

(4) Consider the use of interchange agreements with other rail carriers when determining practicable alternative routes and the potential economic effects of using an alternative route;

(5) Analyze for both the primary route and each practicable alternative route the safety and security risks for the route, railroad facilities, railroad storage facilities, and high-consequence targets along or in proximity to the route; these analyses must be in writing and performed for each calendar year;

(6) Compare the safety and security risks on the primary and alternative routes, including the risk of a catastrophic release from a shipment traveling along these routes, and identify any remediation or mitigation measures implemented on the primary and alternative transportation routes; and

(7) Using the analysis described above, select the practicable route posing the least overall safety and security risk.

The rule must also require that a covered rail carrier, at least once every three years, analyze its route selection determinations, including a comprehensive, system-wide review of all operational changes, infrastructure modifications, traffic adjustments, changes in the nature of high-consequence targets located along or in proximity to the route, or other changes affecting the safety and security of the movements of security-sensitive materials that were implemented since the previous analysis was completed. Finally, the rule is to require that covered rail carriers retain in writing all route review and selection decision documentation and restrict the distribution, disclosure, and availability of this information to appropriate persons.

The 9/11 Commission Act defines "security-sensitive material" to mean the material or classes of materials that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, determines through a rulemaking proceeding with opportunity for public comment pose a significant risk to national security while being transported in commerce.

As we explain further in later sections of this rule, PHMSA believes the interim final rule we are publishing today fulfills the requirements in § 1551 of the 9/11 Commission Act, in addition to addressing the comments received in response to the NPRM. We believe that the changes and additions to the NPRM made in this IFR are well within the scope of the NPRM. We are publishing an interim final rule rather than a final rule to provide interested persons with an opportunity to provide specific comments on whether the IFR fully implements the requirements of the Act.

V. Comments on the NPRM

We received more than 50 sets of comments from individuals; members of Congress; Federal, state, and local governmental entities; companies; industry associations; public interest groups; labor organizations; and a homeowners' association. Generally, large rail carriers and their associations express support for the proposals in the NPRM and, in particular, the flexibility for rail carriers to designate routes based on an analysis of safety and security vulnerabilities and measures implemented to address those vulnerabilities. Small carriers and single line haulers express some concern about the applicability of the routing provisions to their operations—in many cases, smaller rail carriers operate on a single line and routing options are limited.

Commenters representing state and local governments and environmental groups generally oppose the proposals in the NPRM. Some of these commenters suggest that the Federal government should mandate specific routing for high-hazard materials rather than provide rail carriers the discretion to make routing decisions. Others, particularly state and local government commenters, want to be able to implement routing restrictions within their jurisdictions and, thus, urge us to modify or eliminate the preemptive effect of a final rule on non-Federal jurisdictions.

Nearly all the commenters suggest that we maintain consistency with TSA's proposed rail requirements in regard to package size, covered hazardous materials, and enforcement of the proposed requirements.

The comments and public meeting transcripts in the docket for this rulemaking may be reviewed at *http://www.regulations.gov* under docket number *PHMSA–RSPA–2004–18730*. For your convenience, a listing of the docket entries is provided below.

Name/company
Melanie Weintraub and Family.
Kevin D. Kime.
Institute of Makers of Explosives (IME).
Tom Nitza.

Name/company
Anonymous.
U.S. Department of Energy, Naval Nuclear Propulsion Program (NNPP).
Congressman Dennis J. Kucinich.
Transcript—Washington, DC Public Meeting.
BASF Corporation.
District of Columbia.
Institute of Makers of Explosives (IME).
American Chemistry Council (ACC).
The Chlorine Institute, Inc.
The Fertilizer Institute, Inc. (TFI).
Metropolitan Transportation Authority.
The Dow Chemical Company (Dow).
Chairman and 3 members of the Committee on Homeland Security, U.S. House of Representatives.
The National Industrial Transportation League (NITL).
American Short Line and Regional Railroad Association.
Greenpeace.
Back Creek-II Homeowners Association, Inc.
Argonne National Laboratory Report.
Surface Transportation Board (STB).
Friends of the Earth.
Friends of the Earth.
Friends of the Earth.
Mayo Clinic.
Association of American Railroads (AAR).
City of Cleveland, Ohio.
BNSF Railway Company.
Transportation Trades Department, AFL–CIO.
Independent Lubricant Manufacturers Association.
City of Baltimore, Maryland.
Norfolk Southern Corporation.
Eureka County, Nevada, Office of Public Works.
National Association of Chemical Distributors.
Brotherhood of Locomotive Engineers and Trainmen.
DuPont.
Friends of the Earth.
State of New Jersey, Office of Homeland Security & Preparedness.
Transcript—Dallas Public Meeting.
Union Pacific Railroad Company.
The Dow Chemical Company, Olin Corporation, Norfolk Southern Corporation, Union Pacific Railroad Company, and Occidental Chemical Corporation.
Akzo Nobel Chemicals, Inc.
City of St. Louis, MO.
Nuclear Energy Institute.
National Association of SARA Title III Program Officials.
Colorado Emergency Planning Commission.
Jefferson County Local Emergency Planning Committee.
City of Las Vegas, Nevada.
Springfield Terminal Railway Company.
American Petroleum Institute.
CSX Transportation, Inc.
State of Connecticut, Attorney General.

VI. Summary of the Interim Final Rule

Based on comments received in response to the NPRM and the provisions of the 9/11 Commission Act, in this interim final rule, we are adopting the following revisions to the HMR:

- Rail carriers transporting certain explosives, PIH material, and radioactive materials must compile information and data on the commodities transported, including the routes over which these commodities are transported.
- Rail carriers transporting the specified hazardous materials must use the data they compile and relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to a route to analyze the safety and security risks for each route used and practicable alternative routes to the route used.
- Using these analyses, rail carriers must select the safest and most secure practicable route for the specified hazardous materials.
- In developing their security plans, rail carriers must specifically address the security risks associated with shipments delayed in transit or temporarily stored in transit.
- Rail carriers transporting the covered hazardous materials must notify consignees of any significant unplanned delays affecting the delivery of the hazardous material.
- Rail carriers must work with shippers and consignees to minimize the time a rail car containing one of the specified hazardous materials is placed on track awaiting pick-up, delivery, or transfer.
- Rail carriers must conduct security visual inspections at ground level of rail cars containing hazardous materials to check for signs of tampering or the introduction of an improvised explosive device (IED).

This interim final rule is effective June 1, 2008. Beginning January 1, 2009, rail carriers must compile information on the commodities they transport and the routes they use for the 6-month period from July 1, 2008 to December 31, 2008. Rail carriers must complete their data collection by March 1, 2009. By September 1, 2009, rail carriers must complete the safety and security analyses of routes currently utilized and available alternatives and select the safest, most secure routes for transporting the specified explosive, PIH, and radioactive materials. Beginning January 1, 2010, and for subsequent years, rail carriers must compile information on the commodities they transport and the routes used for the previous calendar year and complete route assessments and selections by the end of the calendar year.

In adopting these requirements, we reject the more prescriptive approaches urged by some commenters. We continue to believe that rail carriers are in the best position to identify and assess risks across their systems and that en route safety and security measures will be most effective in reducing system risks when tailored to the carrier's specific circumstances and operations. This approach for determining the safest and most secure rail routes is consistent with the requirements in § 1551 of the 9/11 Commission Act. Rail carriers use alternative routing in the normal course of business to accommodate a variety of circumstances, such as derailments, accidents, damaged track, natural events, traffic bottlenecks, and heightened security necessitated by major events. In performing the route analysis required by the interim final rule, we expect a rail carrier to make an informed decision, balancing all relevant factors and the best information available.

Although individualized risk assessment necessarily is more challenging to perform and oversee, we believe this approach offers the greatest overall benefit. We expect the end result of the analyses to be a clear picture of the practicable alternative route(s) available to rail carriers for the transportation of the specified hazardous materials. As we transition to the new requirements, PHMSA and FRA are committed to working with the railroads to provide the tools and training necessary to conduct the required analyses and make appropriate route selections.

By the same token, we intend to aggressively oversee railroads' route analyses and route selection determinations and will use all available tools to enforce compliance with the rule. As the agency with primary responsibility for railroad safety enforcement, FRA will incorporate review and inspection of route analyses and selections into its inspection programs. FRA inspectors may offer suggestions for modifying or improving the analysis or make changes to a route if the route selection documentation or underlying analysis is found to be deficient. If an inspector's recommendations are not implemented, FRA may compel a rail carrier to make changes and/or assess a civil penalty. Further, if the carrier's chosen route is found not to be the safest and most secure practicable route available, FRA may require the use of an alternative route.

As we implement the interim final rule, PHMSA and FRA are committed to working with railroads, and with communities and first responders, to strengthen their capabilities and reduce

the risks associated with hazardous materials transportation. As discussed below, we are developing a route assessment tool that rail carriers may use in weighing and considering the route analysis criteria.

PHMSA also is stepping up its efforts to build emergency response capabilities through national programs and community-based planning and training. We are sponsoring several initiatives intended to enhance community preparedness, including a project with the International Association of Fire Chiefs to provide real-time access to emergency response information and to share lessons learned from past incidents and exercises. With Congress' approval, we are expanding the Hazardous Materials Emergency Preparedness (HMEP) program, which provides funds for developing, improving, and implementing emergency response plans and for training public sector employees to respond to accidents and incidents involving hazardous materials. We believe these planning and training efforts are most effective when they are tailored to the particular risks facing a community.

We agree that local and regional governments require information on the types, quantities, and locations of hazardous materials transported through their jurisdictions to plan for effective and appropriate emergency response to incidents. We developed a detailed handbook (Guidance for Conducting Hazardous Materials Flow Surveys, January 1995) for local governments to use in conducting commodity flow studies of hazardous materials transported by highway, and we are encouraging states to use HMEP grant funds to study flow patterns of hazardous materials within and between states and to determine the need within a state for regional hazardous materials emergency response teams. We are updating our 1995 handbook through a cooperative research project aimed at producing a comprehensive, user-friendly resource that will help local planners develop commodity-flow data for all modes of transportation and to use the data to inform decision-making concerning risk assessment, emergency response preparedness, and resource allocation and to support analyses across jurisdictional boundaries. In addition, we are developing a guide for assessing emergency response needs and capabilities for hazardous materials releases to provide a tool for state and local governments to use to identify and address unmet emergency response planning and resource needs.

The specific provisions of the interim final rule, including a discussion of comments received on the NPRM and the provisions of the 9/11 Commission Act, are detailed in the following sections of this rule.

VII. Discussion of Comments and Section-by-Section Review

A. General (§ 172.820(a))

In the NPRM, we proposed to require rail carriers to implement enhanced safety and security measures for shipments of the following classes and quantities of hazardous materials:

(1) More than 2,268 kg (5,000 lbs) in a single carload of a Division 1.1, 1.2 or 1.3 explosive;

(2) A bulk quantity of a material poisonous by inhalation, as defined in § 171.8 of the HMR; or

(3) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of the HMR.

The 9/11 Commission Act directs the Secretary of Transportation to ensure that this final rule requires railroad carriers to compile commodity data on the security-sensitive materials they transport. Section 1501 of the Act defines "security-sensitive material" to mean a material or group or class of materials, in a particular quantity and form that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, determines through rulemaking with opportunity for public comment, poses a significant risk to national security while being transported in commerce. In making such a determination, the Secretary of Homeland Security is directed to consider: (1) Class 7 radioactive materials; (2) Division 1.1, 1.2, and 1.3 explosives; (3) materials poisonous or toxic by inhalation, including Division 2.3 gases and Division 6.1 materials; and (4) a select agent or toxin regulated by the Centers for Disease Control and Prevention (CDC) under 42 CFR part 73.

PHMSA, FRA, and TSA assessed the safety and security vulnerabilities associated with the transportation of different types and classes of hazardous materials. The list of materials to which the proposed enhanced safety and security requirements would apply is based on specific railroad transportation scenarios. These scenarios depict how hazardous materials could be deliberately used to cause significant casualties and property damage or accident scenarios resulting in similar catastrophic consequences. DOT and DHS determined that the materials specified in the NPRM present the greatest rail transportation safety and security risks—because of the potential consequences of an unintentional release of these materials—and the most attractive targets for terrorists—because of the potential for these materials to be used as weapons of opportunity or weapons of mass destruction.

Following is a basic summary of the materials and critical vulnerabilities warranting enhanced safety and security measures:

- *Division 1.1, 1.2, and 1.3 explosive materials.* A Division 1.1 explosive is one presenting a mass explosive hazard. A mass explosion is one affecting almost the entire load simultaneously. A Division 1.2 explosive has a projection hazard, which means if the material were to explode, it would project fragments outward at some distance. A Division 1.3 explosive presents a fire hazard and either a minor blast hazard or a minor projection hazard or both. If compromised in transit by detonation or as a secondary explosion to an IED, these explosives could result in substantial damage to people, public and private property, and rail infrastructure. Roughly 2,500 carloads of these explosives are transported by rail each year.
- *PIH materials.* PIH materials are gases or liquids that are known, or presumed on the basis of tests, to be toxic to humans and to pose a hazard to health in the event of a release during transportation. PIH materials pose special risks during transportation because their uncontrolled release can endanger significant numbers of people. The January 6, 2005 train derailment in Graniteville, South Carolina with subsequent release of chlorine sadly underscored this risk. About 100,000 carloads of TIH chemicals are shipped by rail each year. Note that for purposes of the HMR, the terms "poison" and "toxic" are synonymous, as are the terms "poison inhalation hazard" or "PIH materials" and "toxic inhalation hazard" or "TIH materials."
- *Highway Route Controlled Quantity Radioactive Materials (HRCQ).* Shipments of HRCQ of radioactive materials are large quantities of radioactive materials requiring special controls during transportation. Because of the quantity included in a single packaging, HRCQ shipments pose significant safety and security risks. Very few HRCQ shipments are transported by rail. Spent nuclear fuel and high-level waste are shipped in containers certified under the Atomic Energy Act to meet stringent safety requirements designed to prevent release of radioactive materials even in the event of a severe accident.

The NPRM did not propose to include select agents or toxins regulated by the CDC under 42 CFR part 73 because railroads transport few, if any, shipments of theses types of materials. Generally, shipments of infectious substances, including select agents and toxins, must be transported quickly from origin to destination to prevent degradation of samples that can occur over time and to ensure swift diagnosis and treatment of infectious diseases. For these reasons, highway (for short distances) and air (for longer distances) are the preferred modes of transport for these materials.

Most commenters agree that the above listed materials pose the most significant rail transportation safety and security risks. The Institute of Makers of Explosives (IME), Dow Chemical Company (Dow), Chlorine Institute, Inc., and Mr. Tom Nitza express some concern that the PHMSA and TSA rail security NPRMs are not consistent in terms of their application to shipments of PIH materials. The PHMSA NPRM applies to bulk quantities of PIH materials. A "bulk quantity" as used in the HMR means a quantity that exceeds 450 L (119 gallons) for liquids, a net mass greater than 400 kg (882 pounds) for solids, or a water capacity greater than 454 kg (1,000 pounds) as a receptacle for gas (49 CFR 171.8). Thus, the provisions of the PHMSA NPRM would apply to PIH shipments transported in tank cars, including residue amounts exceeding 119 gallons, and portable tanks and other bulk containers. The TSA NPRM applies to tank cars containing PIH materials, excluding residues. Commenters suggest that the two rules should be applied consistently and recommend that we adopt the TSA tank-car threshold and exclude residue shipments.

While we recognize that TSA used a risk-based approach in determining the PIH quantities to which its rail security NPRM would apply, we disagree from a safety perspective that bulk packages other than tank cars and residue shipments should be excepted from the route analysis and route selection requirements adopted in this interim final rule. Although target attractiveness from a security standpoint is diminished, significant safety risks persist. A typical tank car of chlorine, for example, will contain about 16,000 gallons when full and may contain a residue amount of 160–320 gallons (1–2 percent of the original amount in the tank). Upon release from its container or packaging, each cubic foot of liquid chlorine will rapidly expand to approximately 450 cubic feet of chlorine gas. Using this rough estimate for the expansion of chlorine, a residue amount of 160–320 gallons would result in approximately 9,600 to 19,200 cubic feet of chlorine gas. Based on guidance in the DOT Emergency Response Guidebook, the residue amount remaining in a chlorine tank car, if spilled, would suggest an initial isolation distance ranging from 800 ft in all directions and a protective distance of at least 1.5 mi for persons downwind at night. From a safety standpoint, it makes sense to require bulk quantities of PIH residue remaining in tank cars to travel on the "best" route available—the route that considers factors such as population density, emergency response capabilities, environmentally-sensitive and significant areas, and event venues.

Adoption of the proposed TSA threshold for PIH shipments would also exclude rail shipments of most bulk packagings containing PIH materials from the route analysis and selection requirements in this interim final rule. Portable tanks, for example, typically contain up to 3,000 gallons, and some are designed to contain up to 6,000 gallons. While the isolation and evacuation distances for portable tanks would be the same as those for residue quantities in a tank car, the amount of gas produced would greatly increase. The amount of a PIH material contained in a fully loaded portable tank could, if released entirely, expand to produce roughly 180,000 to 361,000 cubic feet of gas, creating a safety risk to individuals within the area of the release. When considering risks posed by bulk containers such as portable tanks, different safety and security related aspects must be considered. Portable tanks are designed to be filled and emptied after removal from a transport conveyance; therefore, they have thinner walls and heads and are generally less robust, which makes them more prone to puncture or rupture than a tank car.

We believe the safety risks posed by the rail transportation of bulk quantities of PIH materials should be addressed through enhanced safety requirements, including route assessments. Therefore, in this interim final rule, we are requiring enhanced safety measures for bulk quantities of a material poisonous by inhalation, as proposed in the NPRM.

Written comments submitted by IME and AAR and statements by participants in the public meetings highlight the confusion as to whether we intended anhydrous ammonia to be included as a PIH material for which enhanced safety and security measures are required. The answer is yes. To ensure that this confusion does not persist, in this interim final rule, we are specifically adding anhydrous ammonia as an example, in § 172.802(a), of a material that falls under the requirements to develop and implement additional safety and security planning requirements, as established by this interim final rule. Commenters are correct that, under the HMR, anhydrous ammonia is classed as a Division 2.2 compressed gas for domestic transportation. However, anhydrous ammonia meets the definition of a material that is poisonous by inhalation under § 171.8 of the HMR. That definition includes any material identified as an inhalation hazard by a special provision in column 7 of the § 172.101 Hazardous Materials Table (HMT). The entry for anhydrous ammonia in the HMT includes Special Provision 13, which requires the words "Inhalation Hazard" to be entered on shipping papers and marked on packages.

Once again, we note that for purposes of the HMR, the terms "poison" and "toxic" are synonymous, as are the terms "poison inhalation hazard" or "PIH materials" and "toxic inhalation hazard" or "TIH materials."

In the NPRM, we sought comments as to whether the proposed requirements should also apply to flammable gases, flammable liquids, or other materials that could be weaponized, as well as hazardous materials that could cause serious environmental damage if released into rivers or lakes. Commenters who addressed this issue state that rail shipments of Division 1.1, 1.2, and 1.3 explosives; PIH materials; and highway-route controlled quantities of radioactive materials pose significant rail safety and security risks warranting the enhanced security measures proposed in the NPRM and adopted in this interim final rule. Commenters generally do not support enhanced security measures for a broader list of materials than was proposed in the NPRM.

The City of Las Vegas, Nevada, supports expanding the list of materials for which enhanced security measures are required to include flammable liquids; flammable gases; certain oxidizers; certain organic peroxides; and 5,000 pounds or greater of pyrophoric materials. While DOT and DHS agree that these materials pose certain safety and security risks in rail transportation, the risks are not as great as those posed by the explosive, PIH, and radioactive materials specified in the NPRM, and we are not persuaded that they warrant the additional precautions required by the interim final rule. We note that the hazardous materials listed by the City of Las Vegas are currently subject to the

security plan requirements in Subpart I of Part 172 of the HMR. Thus, shippers and carriers of these materials must develop and implement security plans based on an assessment of the transportation security risks posed by the materials. Security plans must include measures to address personnel security, unauthorized access, and en route security. DOT, in consultation with DHS, will continue to evaluate the transportation safety and security risks posed by all types of hazardous materials and the effectiveness of our regulations in addressing those risks and will consider revising specific requirements as necessary.

For purposes of Section 1551 of the 9/11 Commission Act, DHS, in consultation with DOT, is developing a list of "security-sensitive materials" for rail transportation. DHS plans to publish its determination concerning "rail security-sensitive materials" in a forthcoming rulemaking. Upon publication of this determination, DOT will consider whether to revise the list of materials to which the safety and security requirements adopted in this IFR apply. We note in this regard that in future rulemaking actions DHS may also make determinations as to the materials that should be considered security-sensitive for other modes of transportation or for non-transportation operations and facilities.

B. Commodity Data (§ 172.820(b))

The NPRM proposed to require rail carriers to compile commodity data on an annual basis for the covered hazardous materials, including an identification of the routes utilized and the total number of shipments transported. The data are to be used by the rail carriers to identify the routes over which the specified hazardous materials are transported and the number of shipments utilizing each route. As proposed, rail carriers would be required to analyze the safety and security risks of the routes identified.

The City of Cleveland, Ohio, suggests that we revise the proposal in the NPRM to require rail carriers to share the commodity data with local governments responsible for the geographic areas through which hazardous materials are transported. We agree that state and local governments should have access to such information, provided access to the information is limited to those with a "need-to-know" for transportation safety and security purposes, and further provided that such information may not be publicly disclosed pursuant to any state, local, or tribal law. Because of the security sensitivity of the commodity data, it is not appropriate for it to be broadly disclosed to government or private entities. We note that AAR Circular OT–55–I provides for disclosure of certain commodity flow data, upon request, to local emergency response agencies and planning groups. At a minimum, such information is to include rank-order identification of the top 25 hazardous commodities transported through the community.

Section 1551(h) of the 9/11 Commission Act requires rail carriers to seek relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to a route used to transport security sensitive materials. A "high consequence target" is defined in the Act to mean a property, natural resource, location, area, or other target designated by the Secretary of Homeland Security that is a viable target of national significance for which an attack by railroad could result in catastrophic loss of life, significant damage to national security or defense capabilities, or national economic harm. We are adopting this requirement in this interim final rule. More broadly, however, rail carriers should work with state and local governments when conducting the route safety and security analysis required by this interim final rule and in making routing decisions based on that analysis. To this end, rail carriers must share information as necessary and appropriate to enable state and local governments to provide meaningful input into the process. We note in this regard that among the factors to be considered by rail carriers in conducting the safety and security analysis are population density along the route; environmentally-sensitive or significant areas; venues along the route (stations, events, places of congregation); emergency response capability along the route; measures and countermeasures already in place to address apparent safety and security risks; proximity to iconic targets; and areas of high consequence along the route. State and local governments may well be able to assist rail carriers in identifying and assessing this type of information. Moreover, state and local government entities may also be able to assist rail carriers in addressing any safety or security vulnerabilities identified along selected routes, in the scheduling of public events, for example, or enhancing emergency response capabilities. If a rail carrier is unable to acquire relevant information from state, local, or tribal officials, then it must document that in its analysis.

We note as well that states and local governments may contact FRA to voice concerns and request an inspection of a route plan, security vulnerability, or, more generally, a rail carrier.

To provide carriers with flexibility in compiling and assessing the data, we are not adopting a specified format; however, the data must be available in a format that can be read and understood by DOT personnel and that clearly identifies the physical locations of the carrier's route(s) and commodities transported over each route. Physical location may be identified by beginning and ending point, locality name, station name, track milepost, or other method devised by the rail carrier which specifies the geographic location. Carriers must retain the data for two years, in either hard copy or electronic form.

C. Rail Transportation Route Analysis (§ 172.820(c))

In the NPRM, PHMSA proposed to require rail carriers to use the data compilation described above to analyze the rail routes over which the specified materials are transported. As proposed, carriers would be required to analyze the specific safety and security risks for routes identified in the commodity data collection and the railroad facilities along those routes. The route analyses would be required to be in writing and to consider, at a minimum, a number of factors specific to each individual route. A non-inclusive list of those factors was included in proposed Appendix D to Subpart I of Part 172.

Several comments were submitted in response to the proposed requirement. In its comments, Dow suggests that "railroad facilities," as used in this section, should be defined as facilities at which storage incidental to movement occurs along the route, including, but not limited to, classification and switching yards, and non-private sidings. Dow suggests that we clarify that railroad facilities do not include an offeror's facility, private track, private siding, or the hazardous materials' final destination. We agree with Dow that the term "railroad facility" should be clearly defined in the HMR. Therefore, in this interim final rule, we are adopting Dow's suggested definition in § 172.820(c). For purposes of this section, "railroad facility" means railroad property including, but not limited to, storage facilities, classification and switching yards, and non-private sidings. The term does not include an offeror's facility, private track, private siding, or consignee's facility.

AAR suggests an exception from the analysis requirements if there have been no significant changes since the

previous analysis and less than five calendar years have passed since the previous analysis was performed. We will address this issue in more detail later in this rule. We would note that any significant changes to the route over which the covered hazardous materials are transported that occurs before the calendar year actually lapses trigger a revised route analysis.

AAR also suggests an exception from the route analysis requirements for rail carriers that transport fewer than 500 carloads of the covered hazardous materials. We do not agree. The safety and security risks posed by shipments of Division 1.1, 1.2, and 1.3 explosives, highway route controlled quantities of radioactive materials, and bulk quantities of PIH materials are significant even if a rail carrier only transports a single carload. The 2005 accident in Graniteville, South Carolina, resulted in the puncture of a single tank car of chlorine, but the consequences of that accident were devastating. While it is true that the calculation of safety and security risks for the rail transportation system as a whole increases as the total number of shipments increases, it is also true there is a risk associated with each carload transported. An exception from the route analysis requirements adopted in this interim final rule for rail carriers that transport the specified hazardous materials in amounts below a given threshold is not warranted given the safety and security risks posed by these materials.

The National Industrial Transportation League asserts that requiring a small railroad to analyze the safety and security risks of its only available route serves no purpose since such railroads have no alternative routes to assess. The commenter notes that small Class II and III railroads generally operate on a single track, usually a feeder track to main rail lines, and have no available alternate routes. We do not agree. Even in the absence of alternative routes, we believe an assessment of the safety and security risks along the route utilized is critical to enhancing rail transportation safety and security. A comparison of the route utilized with an alternate route is not required in this circumstance; however, rail carriers must address safety and security vulnerabilities identified by the route analysis.

Section 1551(c) of the 9/11 Commission Act requires rail carriers' safety and security analyses of the routes used to transport security sensitive materials to include the route, railroad facilities, railroad storage facilities, and high-consequence targets along or in proximity to the route. This is consistent with the analysis requirements proposed in the NPRM and adopted in this interim final rule. We have modified the applicable sections of the interim final rule to clarify that rail carriers' safety and security analyses must cover the listed items.

As discussed in the NPRM, we gave careful consideration to the question of how to define a "rail transportation route" for the purpose of the analysis proposed in the NPRM. We proposed this very basic definition: a route is a series of one or more rail line segments, as selected by the rail carrier. Between the beginning and ending points of a rail carrier's possession and responsibility for a hazardous materials shipment, it would be up to the rail carrier to define the routes to be assessed. For example, a route could begin at the geographic point where a rail carrier takes physical possession of the hazardous material from the offeror or another carrier for transportation. A route could end at the geographic point where: (1) The rail carrier relinquishes possession of the hazardous material, either by delivering the commodity to its final destination or interchanging the shipment to another carrier; or (2) the carrier's operating authority ends. Hazardous materials shipments will likely have intermediary stops and transitions for example, a shipment may be held in a railroad yard, placed in a different train, or stored temporarily during transportation. Our aim is to have rail carriers analyze the territory and track over which these certain hazardous materials are regularly transported in the carrier's normal course of business, while providing flexibility concerning how specific routes will be defined and assessed. The final analysis, however, should provide a clear picture of the routes a rail carrier uses for the specified hazardous materials. Patterns and regular shipments should become obvious, as should non-routine hazardous materials movements, such as the one-time move of a specific shipment of military explosives or high-level nuclear waste.

D. Alternative Route Analysis and Route Selection (§ 172.820(d) & (e))

In addition to the routes normally and regularly used for hazardous materials movements, we proposed to require carriers to analyze and assess the feasibility of available alternative routes over which they have authority to operate. As proposed in the NPRM, for each primary route, one commercially practicable alternative route must be identified and analyzed using, at a minimum, the Rail Risk Analysis Factors of proposed Appendix D to Part 172. It is the rail carrier's responsibility to retain a copy (or an electronic image thereof) of all route review and selection decision documentation used when selecting the practical route posing the least overall safety and security risk. This documentation should include, but is not limited to, comparative analyses, charts, graphics, or rail system maps. The NPRM noted that a primary safety and security concern for the rulemaking was the prevention of a catastrophic release or explosion in proximity to densely populated areas, including urban areas and events or venues with large numbers of people in attendance. The goal of the routing analysis requirement is to ensure that each route used for the transportation of the specified hazardous materials is the one presenting the fewest overall safety and security risks.

Consistent with § 1551(d) of the 9/11 Commission Act, this interim final rule requires rail carriers to identify practicable alternative routes over which the carrier has authority to operate and perform a safety and security analysis of the alternative routes for comparison to the currently used route, including the risk of a catastrophic release from a shipment traveling each route. In this interim final rule, we are adopting a requirement for rail carriers to identify and analyze all practicable alternative routes, rather than a "commercially practicable" route as proposed in the NPRM. We note in this regard, however, that the identification of an alternative practicable route must necessarily include a determination of its commercial practicability. Congress recognized this by including in § 1551(d) a requirement for the alternative route analyses to include the potential economic effects of using an alternative route. Accordingly, we expect rail carriers to address whether a route is economically viable in light of, but not limited to, market conditions, legal and regulatory requirements, and the economics of the commodity, route, offeror, and consignee. A practicable alternative route is one that may be utilized by the railroad within the limits of the railroad's particular operating constraints and, further, is economically viable given the economics of the commodity, route, and customer relationship. The question of commercial practicability must be reasonably evaluated by each rail carrier as a part of its analysis based on the specific circumstances of the route and proposed traffic. If using a possible alternative route would significantly

increase a carrier's operating costs, as well as the costs to its customers, the carrier should consider and document these facts in its route analysis. We expect that carriers will make these decisions in good faith, using the financial management principles generally applied to other business decisions affecting safety and security.

As we acknowledged in the NPRM, in many cases, the only alternative route in a particular area may be on another carrier's system. A rail carrier would not be obligated to analyze an alternative route over which it has no authority to operate. Likewise, in some cases, no alternative route will be available; in those instances, no alternative route analysis would be required. This is particularly true in the case of regional or short-line railroads that are often the only rail carriers in a given geographic area. However, as discussed below, carriers must consider the use of interchange agreements when identifying practicable alternative routes.

When an alternative route is available, the carrier must analyze that route and document its analysis, including the safety and security risks presented by the alternative route, any remediation or mitigation measures in place or available, and the economic effects of using the alternative route.

Under arrangements known as "trackage rights," it is not uncommon for a carrier to conduct train operations over a rail line that is owned, dispatched, and maintained by another carrier. Such arrangements typically grant the trackage rights tenant little or no control over the track and associated infrastructure, including many of the factors set forth in Appendix D. In completing the route analysis required by this interim final rule, a carrier may identify specific risk mitigation measures that are outside its ability to accomplish. Because it is essential that safety and security measures be coordinated among all responsible entities, it is incumbent upon the tenant carrier to work with the owner of the track to evaluate the vulnerabilities and identify measures to mitigate the risks. If measures required by this interim final rule cannot be implemented because another entity refuses or fails to cooperate, the carrier must notify FRA. As stated in the Compliance and Enforcement section of this interim final rule, FRA retains the authority to require use of an alternative route until such time as identified deficiencies are mitigated or corrected. In today's edition of the **Federal Register**, FRA is issuing an NPRM setting forth the enforcement procedures it will use in requiring the use of an alternative route.

On behalf of Friends of the Earth, Fred Millar submitted four sets of comments and spoke at the DC public meeting. In his verbal and written comments, Mr. Millar states that many citizens, local governments, and rail workers are seeking a protective re-routing of the most dangerous hazardous materials cargoes (*e.g.*, TIH or poison gas cargoes) around HTUAs. Mr. Millar suggests that re-routing of through shipments around HTUAs would yield a significant, immediately achievable, and permanent risk reduction.

Greenpeace suggests that we promulgate new regulations that prohibit the storage and routing of TIH rail cargo through densely populated and other sensitive areas wherever technically feasible. Greenpeace states: "If the federal government is concerned about differing local statutes, they should support national routing legislation." Friends of the Earth similarly acknowledges that "nobody thinks it's a good idea to have 46 high-threat target areas with their own local regulations. What we need is a sensible national protective rerouting regulation * * *"

In their comments, both Mr. Millar and Greenpeace express support for the use of interchange agreements by rail carriers to swap cargo between different rail carriers and avoid HTUAs. In addition, § 1551(d) of the 9/11 Commission Act requires rail carriers, when determining practicable alternative routes, to consider the use of interchange agreements with other carriers. We encourage rail carriers to take all feasible actions to mitigate the safety and security risks for hazardous materials shipments; therefore, in this interim final rule, we are adopting the requirement in § 1551(d) for rail carriers to consider interchange agreements when identifying practicable alternative routes.

In a separate effort to address these concerns, in late 2005, FRA granted a request by the AAR and the American Chemistry Council (ACC) to convene a conference under the authority of 49 U.S.C. 333, which affords limited antitrust protection to rail carriers. Section 333 authorizes the FRA Administrator, as delegate of the Secretary of Transportation, to convene conferences at the request of one or more railroads to address coordination of operations and facilities of rail carriers in order to achieve a more efficient, economical, and viable rail system. Persons attending a section 333 conference are immune from antitrust liability for any discussions at the conference, and can also receive immunity for any resulting agreements that receive FRA approval. The purpose of the "Section 333 Conference" is to discuss ways to minimize security and safety risks flowing from the transportation by rail of TIH materials. FRA, PHMSA, and representatives from the Department of Justice (DOJ), the Federal Trade Commission (FTC), TSA, and the Surface Transportation Board (STB) are participating in these discussions. The initial efforts of the conference are focused on the rail transportation of chlorine and anhydrous ammonia, because those chemicals represent over 80 percent of all TIH rail shipments. FRA has met with the rail carriers to discuss modeling and routing options, and has held separate meetings with rail shippers of chlorine and anhydrous ammonia. Further meetings with the rail carriers are anticipated. Projects agreed to through the conference may need the approval of the STB in order to be implemented.

In light of these efforts, and in the interests of system safety, we will not ban movement of the specified hazardous materials through densely populated or other sensitive areas. Rerouting of hazardous materials shipments over longer, more circuitous alternative routes, most of which traverse urban areas at some point, could actually increase safety and security risks. Rerouting to avoid certain areas could add hundreds of miles and several days to a hazardous materials shipment. Those additional miles and days could be on rail infrastructure less suitable to handling hazardous materials. Such rerouting could also result in additional switching and handling of rail cars and more time in rail yards. Longer distances and transit times, increased car handling, and more time in rail yards contribute to an increase in the safety risks to railroad workers and the public inherent in rail transportation in general and the transportation of hazardous materials. As well, military installations, power plants, and other potentially attractive terrorist targets are purposely located on or near rail lines rather than in major metropolitan areas. Such facilities could be placed at greater risk if the Federal government were to require rerouting of highly hazardous materials to avoid densely populated areas. Finally, we would suggest that transportation security is enhanced if terrorists cannot determine whether or when hazardous materials may be rerouted. Such flexibility, provided its use is not made

public, decreases the likelihood that a target will be where a terrorist may expect it to be.

Moreover, the 9/11 Commission Act does not direct the Federal government to mandate specific rail routes for security-sensitive materials; rather, § 1551 of the Act specifically directs the Secretary of Transportation to ensure that the final rule requires *rail carriers* to select the safest and most secure route to be used to transport security-sensitive materials based on a safety and security assessment of the current routes utilized and practicable alternative routes.

We continue to believe that en route safety and security measures will be most effective when tailored to a railroad's specific circumstances and operations. Rail carriers are in the best position to assess security risks along the full length of the routes available to them and to target enhanced safety and security measures to identified vulnerabilities. Appendix D to the rule lists the wide variety of factors that a carrier must consider in choosing the safest and most secure route. The interim final rule requires carriers to analyze the primary route and a practicable alternative route using the Rail Risk Analysis Factors in Appendix D and select the route posing the least overall safety and security risk. As discussed below, carriers are also required to address delays in transit and en route storage security measures in their security plans.

As with the primary route analysis, we expect the end result of the alternative route analysis to be a clear picture of the practicable alternative route(s) available to rail carriers for the transportation of the specified hazardous materials. Alternative routing is used in the normal course of business throughout the railroad industry in order to accommodate circumstances such as derailments, accidents, damaged track, natural events (mudslides, floods), traffic bottlenecks, and heightened security due to major national events. The rail carriers' analysis of the alternative routes should, in the end, clearly indicate the reasonableness, appropriateness, and feasibility, including economic feasibility, of using the alternative routes. We expect a complete alternative route analysis will reflect such considerations as any actual use of the alternative route; safety and security benefits and risks of the alternative route; and commercial or economic costs and benefits of the route. Clearly, if an alternative route, after analysis, is determined to be the safest and most secure practicable route, the carrier would either designate it as the primary route or identify and implement mitigating measures to improve the safety and security of the analyzed primary route. Each carrier will be required to use the practicable route posing the least overall safety and security risk, based on its analysis.

We recognize there may not be one single route that affords both the fewest safety *and* security risks. The most important part of this process is the route analysis itself and the identification of the safety and security risks on each route. The carrier may then make an informed decision, balancing all relevant factors and the best information available, regarding which route to use. For example, if a rail carrier determines one particular route is the safest and most practicable, but has a particular security risk, the carrier should then implement specific security measures so that the route will pose the least overall safety and security risk. We also recognize some security risks or threats may be long-term, while others are short-term, such as those arising from holding a major national event (*e.g.*, national political party conventions) in close proximity to the rail route. Mitigation measures could be put in place for the duration of the event; after the event is over, normal operations could resume. Again, we expect many of the railroads already have experience in addressing safety and security issues such as these and have already catalogued possible actions to mitigate such risks.

In the evaluation of alternative routes, rail carriers may also indicate certain conditions under which alternative routes will be used. In the case of a short-term safety or security risk, such as a temporary event at a venue along the route, or a derailment, carriers may specify an alternative route and the measures to be put in place for use of that alternative route.

Dow suggests that, consistent with the proposed rule's performance standard, a rail carrier should not be required to implement remediation and mitigation measures to address vulnerabilities identified during the performance of the safety and security risk analysis if: (1) An alternative route analysis reveals a practicable route posing the least overall safety and security risk; and (2) the carrier selects that route in accordance with § 172.820(e). We agree with the commenter, but note that the requirement to implement remediation and mitigation measures proposed in the NPRM and adopted in this interim final rule applies in situations where a rail carrier selects a route that does not pose the least overall safety and security risks, based on the alternative routing analysis. In such a situation, the carrier must address the safety and security risks along the selected route through implementation of remediation and mitigation measures. Current security plan requirements apply in assessing risks and implementing measures to mitigate risks on existing routes. Nothing in this interim final rule requires remediation and mitigation measures to address vulnerabilities on a route that the carrier has not selected.

To assist rail carriers in performing these analyses of rail transportation routes and alternative routes, PHMSA is adopting a new Appendix D to Subpart 172. This appendix lays out the minimum criteria a rail carrier must consider in analyzing each route and alternative route. The criteria listed are those we believe are most relevant in analyzing the rail routes for the hazardous materials covered by this interim final rule. Of course, not all the criteria will be present on each route, and each route will have its own combination of factors to be considered. Again, our aim is to enable rail carriers to tailor these analyses to the particular risks and factors of their operations, and to get a clear picture of the characteristics of each route.

For the initial route analysis, we anticipate rail carriers will review the prior two-year period when considering the criteria contained in Appendix D. In subsequent years, the scope of the analyses should focus on changes from the initial analyses. For example, using the criteria in Appendix D, carriers should analyze the impact of changes in areas of high consequence along the route, traffic density, new customers offering or receiving the specified hazardous materials, and significant operational changes, to name a few of the considerations listed in Appendix D.

We recognize the need for flexibility in performing risk assessments; yet we must balance it against the need for some degree of uniformity in the assessments. We have tried to balance these interests by prescribing uniform assessment criteria, while allowing each rail carrier to choose the assessment methodology it will follow. Regardless of the risk assessment methodology selected, a rail carrier should apply certain common principles. These include the following:

- The analysis should employ the best reasonable, obtainable information from the natural, physical, and social sciences to assess risks to health, safety, and the environment;
- Characterizations of risks and of changes in the nature or magnitude of risks should be both qualitative and, to

the extent possible given available data, quantitative;

- Characterizations of risk should be broad enough to deduce a range of activities to reduce risks;
- Statements of assumptions, their rationale, and their impact on the risk analysis should be explicit;
- The analysis should consider the full population at risk, as well as subpopulations particularly susceptible to such risks and/or more highly exposed; and
- The analysis should adopt consistent approaches to evaluating the risks posed by hazardous agents or events.

We believe institutionalizing a practical assessment program is important to supporting business activities and provides several benefits. First, and perhaps most importantly, assessment programs help ensure identification, on a continuing basis, of the movement of materials presenting the greatest risk to the public and the business community. Second, risk assessments help personnel throughout the organization better understand where to best apply limited resources to minimize risks. Further, risk assessments provide a mechanism for reaching a consensus on which risks are the greatest and what steps are appropriate for mitigating them. Finally, a formal risk assessment program provides an efficient means for communicating assessment findings and recommended actions to business unit managers as well as to senior corporate officials. The periodic nature of the assessments provides organizations a means of readily understanding reported information and comparing results over time.

The route analysis described above must identify safety and security vulnerabilities along the route to be utilized. Each rail carrier's security plan must include measures to minimize the safety and security vulnerabilities identified through the route analyses. With respect to mitigation measures and cost, there are many measures rail carriers can take without necessarily adding to the cost of compliance. For example, carriers can work to notify local law enforcement and emergency responders of the types and approximate amounts of particular commodities typically transported through communities. Further, location changes can be made as to where rail cars containing highly hazardous materials are stored in transit. As with the current security plan requirements, our goal is to permit rail carriers the flexibility to identify potential safety and security vulnerabilities and measures to address them, including the determination of which of a carrier's routes present the overall fewest safety and security risks.

We anticipate several possible route selection outcomes:

- The existing route presents the lowest overall safety and security risk and continues to be the selected route.
- The alternative route presents the lowest overall safety and security risks. The alternative will be selected, and transportation of the identified materials on the alternative route will begin as expeditiously as possible.
- The existing or the alternative route presents the lowest overall safety and security risk except under specific identified conditions. The lowest overall safety and security risk route will be used dependent upon the conditions. The conditions warranting route change must be clearly identified in the analyses and routing decision documentation.
- Based on the analyses, either the existing or alternative practicable route is identified as presenting the lowest overall safety and security risks; however, the rail carrier identifies measures to mitigate some of the risk and lower the overall risk of the other route. The route with the lowest overall safety and security risk should be selected and used. In documenting the route selection, the carrier should identify remediation measures to be implemented with a schedule of their implementation and the route change upon completion.

Clearly, other outcomes are possible. The analyses must be completed and any routing changes resulting from the analyses must be implemented no later than January 1 of the following year.

E. Completion of Route Analyses (§ 172.820(f))

In the NPRM, we proposed to require rail carriers to conduct the rail transportation route analysis, alternative route analysis, and route selection by the end of the year to which it applies. In addition, we proposed to require the carrier to complete a comprehensive review of all operational changes, infrastructure modifications, traffic adjustments, or other changes implemented over a period not to exceed five calendar years.

Most comments addressing this aspect of the NPRM request that we eliminate confusion and shorten the five-year time period for the system wide review. One commenter, AAR, suggests that we make the one year review encompass the entire system or better clarify what is meant by the separate reviews. AAR further suggests that carriers should be required to revise and update route analyses only when necessary to account for changes in the way a carrier operates, changes to the routes utilized, or in response to specific threats. In addition, AAR suggests an exception from the analysis requirements if there have been no significant changes since the previous analysis and fewer than five calendar years have passed since the previous analysis was performed.

The Brotherhood of Locomotive Engineers and Trainmen suggests that the frequencies set forth in the proposed rule are appropriate, except that the comprehensive review should be performed every three (3) years.

The 9/11 Commission Act prescribes both the nature and frequency of the analysis. Under § 1551(g) of the Act, we must require rail carriers to perform a comprehensive review at least once every three years. The analysis is to include a system-wide review of all operational changes, infrastructure modifications, traffic adjustments, changes in the nature of high-consequence targets located along or in proximity to the route, and any other changes affecting the safety and security of the movement of security-sensitive materials that were implemented since the previous analysis was completed.

We accept the comments that our proposed schedule for one- and five-year reviews is unnecessarily confusing and complicated and that the proposed five-year time frame for system-wide reviews is too long. Therefore, in this interim final rule, we are requiring rail carriers to conduct all the required analyses every year—that is, each year, a rail carrier must assess the safety and security vulnerabilities along the routes it uses to transport the specified hazardous materials and must also assess the safety and security vulnerabilities of practicable alternative routes for each route currently utilized. This analysis must include a comprehensive review of all operational changes, infrastructure modifications, traffic adjustments, changes in the nature of high-consequence targets located along or in proximity to the route, or other changes affecting the safety and security of the movement of the materials covered by this interim final rule. This process will ensure that modifications and changes to the entire system are taken into account in the route analyses during the same calendar year that they occur. In addition, a rail carrier should consider changes that may reasonably be anticipated to occur in the upcoming year, such as changes to the volumes or types of hazardous materials transported or changes affecting rail infrastructure (*e.g.*,

planned maintenance that could result in temporary closures of bridges or track segments).

We do not agree with AAR that a carrier should be required to review and revise its route analysis only when necessary to account for changes in the way a carrier operates, changes to the routes utilized, or in response to specific threats. We believe there is value in conducting an annual review of the route analysis even in the absence of changes to the way a carrier operates. Conditions along the selected routes may have changed, for example, or there may be changes affecting other factors utilized in the analyses, such as incidents on the selected route, the capabilities of local emergency response agencies, or venues located in proximity to the selected route.

F. Storage, Delays in Transit, and Notification (§ 172.820(g))

In the NPRM, we proposed to require rail carriers to specifically address delays in transit and en route storage in security plans. Thus, we proposed to require rail carrier security plans to include: (1) A procedure for consulting with offerors and consignees to minimize the time a material is stored incidental to movement; (2) a procedure for informing the operator of the facility at which the material will be stored incidental to movement that the material has been delivered; (3) measures to limit access to the materials during storage and delays in transit; (4) measures to mitigate risk to population centers during storage incidental to transportation; (5) measures to be taken in the event of an escalating threat level during storage incidental to transportation; (6) a procedure for notifying the consignee in the event of transportation delays; and (7) a procedure to inform the consignee that the material has been delivered.

Concerning consultations to minimize delays in transit, ACC requests that we require rail carriers to formally consult with offerors and consignees, to minimize to the extent practicable, the period of time during which the material is stored incidental to movement. ACC suggests that the consultations should provide offerors, consignees, and rail carriers equal weight in developing practicable solutions, which consider, but are not limited to, railroad and shipper/consignee production capacity, land availability, restrictive local ordinances, and other relevant factors. ACC further suggests that these consultations should be conducted on an individual basis, where regional distinctions in security requirements and the aforementioned constraints may be given full consideration and that proposed solutions should be implemented with mutual consent of all parties. Finally, ACC recommends that, in those instances when mutual consent is not achieved, proposed solutions should be implemented through binding mediation conducted by the Surface Transportation Board's (STB's) Office of Compliance and Consumer Assistance.

We agree with the suggestion made by ACC that any decision made to minimize the time that a material is stored incidental to movement should include mutual consent from all parties and that those parties should be given equal weight. Therefore, in this interim final rule, we are modifying the proposal by incorporating ACC's suggestion that decisions be implemented with the mutual consent of all parties. We are not including the provision to require consultation with STB in the absence of an agreement among the parties. Such a provision would be overly burdensome; moreover, rail carriers, offerors, and consignees should be capable of coming to an agreement without the necessity for mediation. In the absence of such an agreement, a rail carrier may implement whatever measures it finds necessary to minimize the time that a material is stored incidental to movement.

In the NPRM, we proposed to require a rail carrier to notify the consignee if there is a significant unplanned delay during transportation of one of the specified hazardous materials, within 48 hours of identifying the significant delay, and provide a revised delivery schedule. Our goal is to strengthen the requirements of the current "48-hour rule" contained in § 174.14, and to delegate more positive control and responsibility to the railroads for tracking and controlling the movement of railcars carrying hazardous materials. Such notification will also facilitate communication between the carrier in possession of the material and the consignee to ensure the hazardous materials do not inadvertently wait in transit.

In the NPRM, we specified such notification must be made by a method acceptable to both carrier and consignee. One commenter, AAR, states that consignees should not have veto power over the method selected for notification of delays and is concerned because different customers will likely request different notification systems, potentially increasing transportation costs. On the other hand, The Chlorine Institute indicates that it strongly supports the notification provisions that require carriers to work with receivers and shippers on an appropriate notification method.

We do not believe that the notification issue is as complicated as AAR suggests. We are aware that many rail carriers have in place electronic systems through which consignees may look up and track their expected rail shipments. This is an acceptable method of notification, as are e-mail, facsimile, or telephone. None of these methods would result in significant cost impacts for rail carriers. Because most railroads already have in place systems to monitor the transportation of certain types of shipments, and procedures for notification of consignees, we do not anticipate this requirement will involve major operational changes for any of the affected carriers. The reason the carrier and consignee must agree on a notification method is to ensure that the information about a shipment delay reaches the consignee in a timely fashion. Absent such an agreement, the carrier cannot be certain that the notification will reach the appropriate official for the consignee.

A significant delay is one that: (1) Compromises the safety or security of the hazardous material shipped; or (2) delays the shipment beyond its normal expected or planned shipping time. A "significant delay" must be determined on a case-by-case and hazmat-by-hazmat basis. As a general rule, any delay beyond the normal or expected shipping time for the material qualifies as a "significant delay."

The AAR Circular OT–55–I outlines operating practices the rail industry has already implemented for certain time-sensitive shipments. The notification requirement adopted in this interim final rule simply builds on those practices. In particular, the Circular addresses time-sensitive shipments and specifies railroads are to be responsible for monitoring of shipments of such products and communicating with affected parties when the shipment may not reach its destination within the specified timeframe. Circular OT–55–I recommends delivery of time-sensitive materials should take place within 20 or 30 days, depending on the commodity.[2] Because of the variety of materials covered by this interim final rule, PHMSA has not designated specific delivery timeframe guidelines for these materials.

In the NPRM, we proposed to require carriers to notify storage facilities and consignees upon delivery of a rail car

[2] The additional commodities listed in Circular OT–55–I and requiring a delivery time of 30 days are styrene monomer, stabilized and flammable liquid, n.o.s. (recycled styrene).

containing one of the specified hazardous materials. IME, Akzo Nobel Chemicals, and ACC suggest we delete the delivery notification requirements and, instead, align the HMR with the positive chain-of-custody requirements proposed by TSA in its rail security NPRM. We agree. The TSA requirements establish positive control of rail cars containing the specified hazardous materials by requiring direct hand-off of each car to a responsible individual, at points of: (1) Carrier interchange in an HTUA or outside an HTUA for cars that may enter an HTUA; (2) origin; and (3) delivery to a facility in a HTUA. There is, therefore, no need for the notification requirements we proposed in the NPRM. Accordingly, we are not adopting them in this interim final rule.

G. Recordkeeping (§ 172.820(h))

In the NPRM, we proposed to require each rail carrier to maintain an accessible copy of the information and analyses associated with the collection of commodity data and route assessment and selection processes. We further proposed to require the distribution of such information to be limited to covered persons with a need-to-know, in accordance with Sensitive Security Information (SSI) regulations in 49 CFR Parts 15 and 1520. The recordkeeping requirements are consistent with the 9/11 Commission Act.

No comments were submitted in response to this paragraph; therefore, we are adopting it as proposed.

H. Compliance and Enforcement (§ 172.820(i))

FRA is the agency within DOT responsible for railroad safety and is the primary enforcer of safety and security requirements in the HMR pertaining to rail shippers and carriers. FRA inspectors routinely review security plans during site visits and may offer suggestions for improving security plans, as appropriate. If an inspector's recommendations are not implemented, FRA may compel a rail shipper or carrier to make changes to its security plan through its normal enforcement process. FRA consults with TSA concerning railroad security issues in accordance with the FRA-TSA annex to the DOT-DHS MOU on transportation security.

In the NPRM, we proposed to require carriers to revise their analyses or make changes to a route if the route selection documentation or underlying analyses are found to be deficient. In addition, we proposed that, are the carrier's chosen route is found not to be the safest and most secure practicable route available, the FRA Associate Administrator for Safety, in consultation with TSA, could require the use of an alternative route until such time as identified deficiencies are satisfactorily addressed.

AAR questions whether PHMSA has the statutory authority to grant FRA the power to require the use of an alternative route. FRA's authority to require the use of an alternative route stems from § 5121(a) of the Federal hazardous materials transportation law. The Secretary of Transportation is authorized to issue an order, after notice and an opportunity for a hearing, requiring compliance with the Federal Hazmat Law or a regulation, order, special permit, or approval issued under Federal Hazmat Law. The authority provided in 49 U.S.C. 5121(a) has been delegated to FRA, "with particular emphasis on the transportation or shipment of hazardous materials by railroad" (49 CFR 1.49(s)) as well as to FAA, FMCSA, PHMSA, and USCG (with "particular emphasis" on the respective authority of these agencies).

Dow and IME suggest that, consistent with fundamental concepts of due process, PHMSA should provide an immediate procedure to appeal an FRA determination to require the use of an alternative route. STB suggests that the regulation indicate that prior to making a determination to require the use of an alternative route, FRA and TSA will obtain the comments of STB regarding whether the contemplated alternative route(s) would be economically practicable. In addition, Dow requests that PHMSA clarify the role that TSA or other agencies will play in performing inspections under this rule, including addressing whether TSA will use third-party contractors to perform inspections.

In the preamble to the NPRM, we indicated that FRA would develop procedures for rail carriers to appeal a decision by the FRA Associate Administrator for Safety to require the use of an alternative route, including information a rail carrier should include in its appeal, the time frame for filing an appeal, and the process to be utilized by FRA in considering the appeal, including any consultations with TSA or PHMSA. FRA is developing such procedures and is publishing a notice of proposed rulemaking concurrently with this interim final rule. We note in this regard that FRA will only require an alternate route if it concludes the carrier's analysis did not satisfy the minimum criteria for performing a safety and security risk analysis, as established by the proposed § 172.820 and Appendix D to Part 172. Moreover, FRA expects to mandate route changes only in exigent circumstances or where a carrier has acted in clear defiance of the requirements.

We agree with STB's suggestion that FRA and TSA should consult with STB prior to making a determination to compel the use of an alternative route. In this interim final rule, we are adding language to this effect in the appropriate paragraph. STB's participation in this process will ensure that the FRA-TSA determinations concerning alternative routes fully consider the economic impacts and commercial practicability of the routes under consideration.

As we explained in the preamble to the NPRM, with respect to enforcement of the security requirements in this interim final rule, FRA plans to work closely with TSA to develop a coordinated enforcement strategy to include both FRA and TSA inspection personnel. We note in this regard that TSA does not have the authority to enforce safety or security requirements established in the HMR. If in the course of an inspection of a railroad carrier or a rail hazardous material shipper, TSA identifies evidence of non-compliance with a DOT security regulation, TSA will provide the information to FRA and PHMSA for appropriate action. TSA will not directly enforce DOT security rules and will not initiate safety inspections. In accordance with the PHMSA-TSA and FRA-TSA annexes to the DOT-DHS MOU, all the involved agencies will cooperate to ensure coordinated, consistent, and effective activities related to rail security issues. To address Dow's concern, in this interim final rule we have included a clear statement that FRA, in cooperation with PHMSA, will enforce the requirements contained in this interim final rule.

We are not implementing a submission and approval process for security plans and route analyses. The review and approval of hundreds of security plans and analyses would be extremely resource-intensive and time-consuming. Moreover, the 9/11 Commission Act does not provide for an approval process for route selections made by rail carriers. During FRA's normal inspection process, inspectors will review security plans, route analyses, and route choices for compliance with applicable regulations to ensure that the chosen route is the safest and most secure practicable route as supported by the analysis done by the carrier. If the inspection identifies deficiencies in the route analyses, security plan, or manner in which the plan is implemented, the deficiencies will be addressed using FRA's existing

enforcement procedures. Inspectors will have the discretion to issue notices of non-compliance or to recommend assessment of civil penalties for probable violations of the regulations. As indicated above, FRA may require a rail carrier to use an alternative route if the carrier's chosen route is found not to be the safest and most secure practicable route available.

I. Appendix D to Part 172—Rail Risk Analysis Factors

In the NPRM, we proposed minimum criteria in Appendix D to Part 172 to be used by rail carriers when performing the safety and security risk analyses required by § 172.820. We listed 27 factors in this appendix for carriers to consider in the analyses.

Generally, commenters support the rail risk analysis factors provided in Appendix D. For example, the Brotherhood of Locomotive Engineers and Trainmen, states that it wholeheartedly supports the risk analyses and that the appropriate metrics essential to a detailed risk analysis are provided in this appendix. Dow, AAR, and IME also provided comments. Most notably, IME indicated that it supports the factors, but suggest we enhance their usefulness by providing a ranking of the criteria listed in Appendix D or an indication of the order of precedence in which the factors should be considered. IME notes, for example, that a route with the best emergency response capability is likely to be a route that is more densely populated and asks how these factors should be weighted in such situations.

We agree that how these factors are weighted and used is an extremely important aspect of an overall safety and security risk assessment methodology. However, we do not believe that a one-size-fits-all approach to weighting the factors provides sufficient flexibility for rail carriers to address unique local conditions or concerns. We expect carriers to make conscientious efforts to develop logical and defendable systems using these factors. Tools to assist rail carriers to use the factors to assess the safety and security vulnerabilities of specific routes, including how to weight the factors in performing the analysis, are being developed with funding by a grant from the Department of Homeland Security. Initial products from this program were developed in 2007 and are currently being evaluated and refined. We expect the analysis tools to be available in 2008.

In this interim final rule, we are adopting the list of factors as proposed in the NPRM, with modifications for consistency with requirements of the 9/11 Commission Act. Specifically, we are adding high consequence targets, as defined in § 1551(h)(2) to the list of factors that must be considered.

J. Pre-Trip Security Inspections (§ 174.9)

PHMSA proposed in the NPRM to increase the scope of the current safety inspection to include a security inspection of all rail cars carrying placarded loads of hazardous materials. The primary focus of the enhanced inspection is to recognize an IED, which is a device fabricated in an improvised manner incorporating explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals in its design, and generally including a power supply, a switch or timer, and a detonator or initiator.

To guard against the possibility that an unauthorized individual could tamper with rail cars containing hazardous materials to precipitate an incident during transportation, such as detonation or release using an IED, we proposed to require the rail carriers' pre-trip inspections of placarded rail cars to include an inspection for signs of tampering with the rail car, including its seals and closures, and an inspection for any item that does not belong, is suspicious, or may be an IED. When an indication of tampering or a foreign object is found, the rail carrier must take appropriate actions, before accepting the rail car for further movement, to ensure the security of the rail car and its contents have not been compromised.

The commenters overwhelmingly support the proposed inspection requirement. One commenter, BNSF Railway Company, asks PHMSA to provide specific details on how the inspection should be performed. It asks if walking the train or inspecting it from a slow moving vehicle would suffice for the inspection requirements. Another commenter, Dow, asks if PHMSA or TSA will provide the additional training necessary for rail carriers to comply with the proposed changes. The Chlorine Institute states that the additional training required in conjunction with regular training should not be overly burdensome.

Based on commenters' support for enhanced security inspections, we are adopting the provision as proposed in the NPRM. We offer the following clarifications in response to the commenters' questions.

The security inspection of each placarded rail car should be performed in conjunction with the safety inspection currently required under § 174.9. The inspection is to be conducted at ground level and at a close enough distance so that any problems can be readily identified. A complete inspection will encompass the entire rail car at ground level, including the area beneath the rail car; thus, a proper inspection will cover more of a rail car than can be seen from a slow moving vehicle. An inspector must be able to identify signs of tampering, including closures and seals, suspicious items or items that do not belong, and other signs that the security of the car may have been compromised, including the presence of an IED. Where an indication of tampering or a foreign object is found, the rail carrier must take appropriate actions to ensure the security of the rail car and its contents have not been compromised before accepting the rail car for further movement.

We understand from the comments submitted by AAR that training to enable rail carrier personnel to comply with the security inspection requirements is already provided in most carriers' current inspection programs. In addition, as we stated in the preamble to the NPRM, TSA is developing instructional materials to assist rail carriers in training employees on identifying IEDs and signs of tampering. This training material should be completed and available by the middle of 2008.

K. Preemptive Effect of This Interim Final Rule (§ 172.822)

Because of the high level of interest in this issue, we proposed to address the preemptive effect of the final rule in the regulatory text. We explained our judgment that state and local regulation of rail routes for shipments of hazardous materials is preempted, by operation of the Federal hazardous materials transportation law (49 U.S.C. 5125) and the Federal Rail Safety Act (49 U.S.C. 20106), based on the agency's decision in Docket No. HM–232 to leave the routing of hazardous materials shipments to the judgment of rail carriers. We also stated our view that the route analysis and selection proposals in the NPRM, if adopted, "would have the same preemptive effect upon states, political subdivisions, or Indian tribes," because those proposals would "not change PHMSA's basic approach in HM–232 of leaving ultimate hazardous materials routing decisions to the rail carriers." 71 FR at 76845 & 76846.

We specifically invited comments from interested states, political subdivisions, and Indian tribes. Immediately after publication of the NPRM, we sent individual letters to the mayors of twelve cities where local officials had expressed concerns about routes of rail shipments of hazardous

materials and to the following organizations: The National Governors Association, Council of State Governments, National Conference of State Legislatures, United States Conference of Mayors, National Association of Counties, National League of Cities, and National Congress of American Indians. In these letters, we summarized the proposals in the NPRM and provided a copy of the NPRM, encouraged participation in the rulemaking and the public meeting on February 1, 2007, and offered to meet separately to discuss the rulemaking in detail. None of the organizations or cities accepted our offer to meet separately to discuss the NPRM, nor did they participate in the public meeting.

In response to the NPRM and these additional letters, we received numerous comments on whether or not states and political subdivisions are preempted from imposing additional designations or restrictions on routes for rail shipments of hazardous materials, beyond the route analysis and selection process proposed in the NPRM. In general, comments from industry included statements that there is a need for "national uniformity on the rail routing of TIH, explosive, and radioactive materials" (ACC); that "[b]y preempting state laws that restrict the movement of hazardous materials, PHMSA will ensure hazardous materials continue to travel on the safest and most secure mode of transportation for these items" (TFI, NITL); and that "Federal rulemaking and enforcement of hazardous materials regulations allows for a unified plan to effectively implement best practices throughout the nation" and "minimizes confusion for regulated entities by utilizing uniform criteria for all facilities" (Chlorine Institute).

However, some of the comments from shippers and carriers criticized the specific language proposed in the NPRM. IME questioned "why the statement was limited to these proposals and does not encompass all of the agency's security rules, or even all of the agency's security plan rules." In a set of jointly-filed comments, Dow, Olin, Norfolk Southern, Union Pacific, and Occidental ask PHMSA to "expand the preemption considerations described in proposed § 172.820(g)," because "routing is only one aspect of state and local regulation that has the potential to conflict with federal regulations." These companies also stated that "49 U.S.C. 20106 only authorizes *state* regulation in limited circumstances and excludes all references to 'political subdivisions of a State' (i.e. local government safety or security regulation)." (Emphasis in original) In its separate comments, Dow stated that "PHMSA should make it abundantly clear that the federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, substantially subsumes all state, local, and Indian tribe laws on the subject matter of the use of rail lines for the transportation of hazardous materials."

AAR asserted that the NPRM "fail[s] to provide the public with proper notice as to the scope of preemption. The fundamental preemption provision for railroad safety and security requirements is 49 U.S.C. section 20106," which "applies to regulatory action taken by any agency within DHS or DOT, including FRA, PHMSA, and TSA." AAR also stated that the NPRM falls short in addressing preemption because the preemption provision it proposes only addresses one aspect of the NPRM, routing requirements; exceeds its statutory authority by providing that PHMSA can waive preemption of state or local routing requirements; and ignores the complete preemption of local regulation of railroad safety and security.

Similarly, the City of Cleveland, Ohio stated that the regulatory text proposed in the NPRM should also refer to 49 U.S.C. section 20106, and also contended that § 20106 allows "state governments (interpreted by case law to also include local governments)" to adopt an additional requirement on rail transportation which: "(1) Is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and (3) does not unreasonably burden interstate commerce." The City of Cleveland, Ohio also asserted that, as one of the high threat urban areas (HTUA) designated by TSA, "it should be provided with special consideration with respect to its needs to adopt enhanced regulations and the possible need to enact specific routing restrictions for rail."

PHMSA agrees with those comments that suggest that the regulatory language on preemption should refer to both 49 U.S.C. section 5125 and 20106, because both of those provisions must be considered in any determination whether a non-Federal requirement on rail transportation of hazardous materials is preempted. *See CSX Transportation, Inc.* v. *Easterwood*, 507 U.S. 658, 663 n. 4 (1993); *CSX Transportation, Inc.* v. *Public Utilities Comm'n*, 901 F.2d 497, 501 (6th Cir. 1990), cert. denied, 498 U.S. 1066 (1991) ("any regulation" adopted by the Secretary of Transportation respecting railroad safety matters, regardless of the law under which the regulation is adopted, may have preemptive effect under § 20106). Moreover, as stated in the NPRM, PHMSA has concluded (and the United States has taken the position in the pending lawsuit over the District of Columbia [District] ordinance) that both §§ 5125 and 20106 preempt any non-Federal designation or restriction of routes for rail shipments of hazardous materials.

PHMSA also agrees with those commenters who suggested that we clarify that the preemption provisions of 49 U.S.C. sections 5125 and 20106 apply to all of the HMR, not just to § 172.820. Therefore, in place of proposed § 172.820(g), we are adding a new § 172.822 dealing with the preemptive effect of the HMR, including subpart I. Section 172.822 refers to the statutory standards for preemption in 49 U.S.C. sections 5125 and 20106, which we believe would apply to any state, local, or Indian tribe requirement affecting the transportation of hazardous materials, including the designation or restriction of routes for rail shipments of hazardous materials.

The District referred to the pending lawsuit by CSX Transportation, Inc. which challenges the District's ordinance against rail shipments of certain types and quantities of hazardous materials within 2.2 miles of the U.S. Capitol building. The District stated that "the fundamental role of government is to protect its citizens. That role should be left to the District here, and not given to private industry, unless and until the federal government develops the capacity to make such determinations." The City of Baltimore, Maryland, emphasized that the decision of the Court of Appeals in the CSX litigation "did not represent a final ruling on the merits of the issue," but simply overturned the District Court's denial of a preliminary injunction.

The Chairman and three other members of the Homeland Security Committee of the U.S. House of Representatives stated there is a need for "clear and mandatory direction from the federal government," and a "finding of preemption is a gift to the industry and strips away local and state governments' ability to protect its citizens."

As we have indicated elsewhere in this rule, rerouting of hazardous materials to avoid densely populated or sensitive areas may well increase safety and security risks. Moreover, routing restrictions or prohibitions enacted by states or local governments transfer safety and security risks to other areas but do little to achieve enhanced safety and security for the rail transportation

system as a whole. We note that virtually every urban and suburban jurisdiction in the United States has a population density that is a matter of concern in planning for and regulating hazardous materials transportation; if all of the jurisdictions located on or near rail routes were to enact routing restrictions applicable to the rail transportation of hazardous materials, such transportation would come to a virtual standstill. The provisions adopted in this interim final rule will reduce the overall risks posed by the movement of explosive, PIH, and radioactive materials by rail, without imposing an undue burden on transportation.

In § 1528 of the 9/11 Commission Act, Congress restructured the preemption provision in 49 U.S.C. 20106 by placing the then-existing language in a new paragraph (a), and in a new paragraph (b) clarifying what state law causes of action for personal injury, death, or property damage are not preempted. The Joint Conference Report on § 1528 makes clear that the restructuring of 49 U.S.C. 20106 was not intended to make any substantive change to the meaning of new paragraph (a). Rather, as specified in § 1551(h), the specific authority of states, localities, and Indian tribes is limited to providing information on the security risks to high-consequence targets along or in proximity to a route used by a rail carrier to transport security-sensitive materials. Nonetheless, as discussed above, this does not prevent rail carriers from working with state, local, and tribal governments, including sharing information as necessary and appropriate, to enable these non-Federal government bodies to provide meaningful input into the rail carrier's process of conducting the route safety and security analysis, and making routing decisions based on that analysis, as required by this interim final rule. We encourage such cooperation between rail carriers and state, local, and tribal officials.

In this regard, Eureka County, Nevada, expressed concern that the proposed requirements for rail carriers to select the routes based on an analysis of safety and security risks would preempt the announced program of the Department of Energy (DOE) to work with stakeholders, including state regional groups, in selecting routes for shipments of spent nuclear fuel to Yucca Mountain. We do not believe that this interim final rule will adversely affect the DOE program for selecting spent nuclear fuel routes. Indeed, the DOE effort to include stakeholders in its route selection deliberations is precisely the model we mandate that rail carriers follow as they implement the provisions adopted in this interim final rule—that is, to work with state and local governments in conducting route safety and security analyses and in making routing decisions based on the analyses. Nothing in this interim final rule should be construed or applied in a manner inconsistent with DOE fulfilling its obligations under § 180(c) of the Nuclear Waste Policy Act to provide technical assistance and funds to states and tribes for training public safety officials on procedures for safe routine transportation and emergency response with regard to spend nuclear fuel or high level waste shipments to a repository.

The National Association of SARA Title III Program Officials, the Colorado Emergency Planning Commission, and the Jefferson County, Colorado, Local Emergency Planning Committee stated that "preemption must come with a benefit" and that "PHMSA should require carriers to consider increased risk to a community as part of their routing decisions." We note in this regard that the routing safety and security analyses adopted in this interim final rule require rail carriers to consider the safety and security risks of the routes they use, considering factors such as population density along the route, venues along the route (stations, events, places of congregation), emergency response capability along the route, and areas of high consequence along the route.

VIII. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This interim final rule is published under authority of Federal Hazardous Materials Transportation Law (Federal Hazmat Law; 49 U.S.C. 5101 *et seq.*) Section 5103(b) of Federal Hazmat Law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. In addition, this interim final rule is published under authority of the Implementing the Recommendations of the 9/11 Commission Act of 2007. Section 1551 of the 9/11 Commission Act directs the Secretary of Transportation, in consultation with the Secretary of Homeland Security, to publish a final rule by May 3, 2008, based on the NPRM published under this docket on December 21, 2006. In accordance with Section 1551(e) of the Act, PHMSA's final rule must require rail carriers of "security-sensitive materials" to "select the safest and most secure route to be used in transporting" those materials, based on the rail carrier's analysis of the safety and security risks on primary and alternate transportation routes over which the carrier has authority to operate.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule is a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget (OMB). The interim final rule is a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034). We completed a regulatory evaluation and placed it in the docket for this rulemaking.

Generally, costs associated with the provisions of this interim final rule include costs for collecting and retaining data and performing the mandated route safety and security analysis. We estimate total 20-year costs to gather the data and conduct the analyses proposed in this interim final rule to be about $20 million (discounted at 7%).

In addition, rail carriers and shippers may incur costs associated with rerouting shipments or mitigating safety and security vulnerabilities identified as a result of their route analyses. Because the interim final rule builds on the current route evaluation and routing practices already in place for most, if not all, railroads that haul the types of hazardous materials covered, we do not expect rail carriers to incur significant costs associated with rerouting. The railroads already conduct route analyses and re-routing—in line with what this rule would require—in accordance with the AAR comments and Circular OT–55–I. Moreover, the smaller carriers (regionals and short lines) are unlikely to have access to many alternative routes, and where an alternative does exist, it is not likely to be safer and more secure than the route they are currently using. If there is an alternative route the carrier determines to be safer and more secure than the one it is currently using, the carrier could well switch routes, even in the absence of a regulatory requirement, because it reduces the overall risk to its operations. Such reduction in risk offers a significant economic advantage in the long run.

Identifying and mitigating security vulnerabilities along rail routes is currently being done by the railroads. We believe that readily available "high-tech" and "low-tech" measures are

being quickly implemented. The development, procurement, and widespread installation of the more technology-driven alternatives could take several years, however, PHMSA's previous security rule requires the railroads to have a security plan that includes en route security. This existing regulatory requirement, coupled with industry efforts to address security vulnerabilities, has caused railroads to enhance their security posture. As with routing decisions, such reduction in risk offers a significant economic advantage in the long run. Therefore, we expect that the cost of mitigation attributed solely to this interim final rule will not be significant. We note in this regard that safety and security measures are intertwined and often complementary; therefore, separating security costs from safety costs is not feasible.

We do not expect this interim final rule to result in a diversion from railroads to trucks. For the movements subject to this rule, transportation and distribution patterns, with associated infrastructure, tend to be well-established. For example, the vast majority of PIH offerors ship by rail; indeed, many do not have the infrastructure (loading racks, product transfer facilities) necessary to utilize trucks for such transportation. Moreover, the current fleet of cargo tank motor vehicles is insufficient to handle a significant shift of PIH cargoes from rail to highway—for example, there are only 85 cargo tank motor vehicles used for the transportation of chlorine. Because it takes about four tank trucks to haul the amount of product that can be moved in a rail tank car, the industry would have to build many more trucks to accommodate a shift in transportation from rail to highway, necessitating a significant expansion in current tank truck manufacturing capacity. In addition, because it takes four trucks to transport the same amount of product as a single rail tank car, it generally is only cost-effective to utilize trucks for relatively limited distances. A farm cooperative or agricultural products distributor, for example, typically receives large quantities of anhydrous ammonia by rail car and offloads the material into storage tanks for subsequent truck movement to local customers.

Changing these established transportation patterns would require substantial investment in new capacity and infrastructure, vastly exceeding the costs of complying with the interim final rule. Under these circumstances, we do not expect any shift in transportation mode as a result of implementation of this interim final rule. We note in this regard that no commenters raised this issue in their discussions of the potential impacts of the proposals in the NPRM. Overall transportation costs should not substantially increase because of this interim final rule.

Estimating the security benefits of the new requirements is challenging. Accident causation probabilities can be estimated based on accident histories in a way that the probability of a criminal or terrorist act cannot. The threat of an attack is virtually impossible to assess from a quantitative standpoint. It is undeniable that hazardous materials in transportation are a possible target of terrorism or sabotage. The probability that hazardous materials will be targeted is, at best, a guess. Similarly, the projected outcome of a terrorist attack cannot be precisely estimated. It is assumed choices will be made to maximize consequences and damages. Scenarios can be envisioned in which hazardous materials could be used to inflict hundreds or even thousands of fatalities. To date, there have been no known or specific threats against freight railroads, rail cars, or tank cars, which makes all of these elements even more difficult to quantify. Security plans lower risk through the identification and mitigation of vulnerabilities. Therefore, rail carriers and the public benefit from the development and implementation of security plans. However, forecasting the benefits likely to result from plan implementation requires the exercise of judgment and necessarily includes subjective elements.

The major benefits expected to result from this interim final rule relate to enhanced safety and security of rail shipments of hazardous materials. We estimated the costs of a major accident or terrorist incident by calculating the costs of the January 2005 Graniteville, South Carolina, accident. This accident killed nine people and injured 554 more. In addition, the accident necessitated the evacuation of more than 5,400 people. Total costs associated with the Graniteville accident are almost $126 million. The consequences of an intentional release by a criminal or terrorist action, particularly in an urban area, likely would be more severe than the Graniteville accident because an intentional act would be designed to inflict the most damage possible. The requirements of the interim final rule are intended to reduce the safety and security risks associated with the transportation of the specified hazardous materials. If the measures proposed in this interim final rule prevent just one major accident or intentional release over a twenty-year period, the resulting benefits would more than justify the potential compliance costs; we believe that they could.

C. Executive Order 13132

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Orders 13132 ("Federalism") and 13175 ("Consultation and Coordination with Indian Tribal Governments"). This interim final rule would not have any direct effect on the states, their political subdivisions, or Indian tribes; it would not impose any compliance costs; and it would not affect the relationships between the national government and the states, political subdivisions, or Indian tribes, or the distribution of power and responsibilities among the various levels of government.

Section VI.K above contains a discussion of PHMSA's conclusion that the decision in the March 25, 2003 final rule in HM–232 to leave to rail carriers the specifics of routing rail shipments of hazardous materials preempts all states, their political subdivisions, and Indian tribes from prescribing or restricting routes for rail shipments of hazardous materials, under Federal hazardous material transportation law (49 U.S.C. 5125) and the Federal Rail Safety Act (49 U.S.C. 20106). In that section, we also discuss the comments on the proposed language in the NPRM concerning the preemptive effect of HM–232 and this interim final rule and explain the reasons for adopting revised language in 49 CFR 172.822.

D. Executive Order 13175

We analyzed this interim final rule in accordance with the principles and criteria prescribed in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this interim final rule does not significantly or uniquely affect tribes, and does not impose substantial and direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply; thus, a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

To ensure potential impacts of rules on small entities are properly considered, we developed this interim final rule in accordance with Executive Order 13272 ("Proper Consideration of

Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

The Small Business Administration (SBA) permits agencies to alter the SBA definitions for small businesses upon consultation with SBA and in conjunction with public comment. Pursuant to this authority, FRA published a final rule (68 FR 24891; May 9, 2003) defining a "small entity" as a railroad meeting the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue. This is the definition used by PHMSA to determine the potential impact of this interim final rule on small entities.

Not all small railroads will be required to comply with the provisions of this interim final rule. Most of the 510 small railroads transport no hazardous materials. PHMSA and FRA estimate there are about 100 small railroads—or 20% of all small railroads—that could potentially be affected by this interim final rule. Cost impacts for small railroads will result primarily from the costs for data collection and analysis. PHMSA estimates the cost to each small railroad to be $2,776.70 per year over 20 years, discounted at 7%. Based on small railroads' annual operating revenues, these costs are not significant. Small railroads' annual operating revenues range from $3 million to $20 million. Thus, the costs imposed by the interim final rule amount to between 0.01% and 0.09% of a small railroad's annual operating revenue.

This interim final rule will not have a noticeable impact on the competitive position of the affected small railroads or on the small entity segment of the railroad industry as a whole. The small entity segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as "feeders" to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for the larger railroads. They transport those cars over relatively short distances and then turn them over to the larger systems, which transport them relatively long distances to their ultimate destination, or for handoff back to a smaller railroad for final delivery. Although their relative interests do not always coincide, the relationship between the large and small entity segments of the railroad industry is more supportive and co-dependent than competitive.

It is also rare for small railroads to compete with each other. As mentioned above, small railroads generally serve smaller, lower density markets and customers. They tend to operate in markets where there is not enough traffic to attract or sustain rail competition, large or small. Given the significant capital investment required (to acquire right-of-way, build track, purchase fleet, etc.), new entry in the railroad industry is especially rare. Thus, even to the extent the interim final rule may have an economic impact, it should have no impact on the intramodal competitive position of small railroads.

We did not receive any comments in opposition to our conclusion that this rulemaking will not have a significant impact on a substantial number of small entities. Based on the lack of opposing comments, the foregoing discussion, and more detailed analysis in the regulatory evaluation for this interim final rule, I certify that the provisions of this interim final rule, if adopted, will not have a significant impact on a substantial number of small entities.

F. Paperwork Reduction Act

This interim final rule may result in an increase in annual burden and costs under Office of Management and Budget (OMB) Control Number 2137–0612. PHMSA currently has an approved information collection under OMB Control No. 2137–0612, "Hazardous Materials Security Plans" expiring May 31, 2009.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. 5 CFR 1320.8(d) requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA submitted to OMB for approval based on the requirements in this rule. PHMSA has developed burden estimates to reflect changes in this proposed rule. We estimate that the total information collection and recordkeeping burden for the current requirements and as specified in this rule would be as follows:

OMB No. 2137–0612, "Hazardous Materials Security Plans"

First Year Annual Burden:
Total Annual Number of Respondents: 139.
Total Annual Responses: 139.
Total Annual Burden Hours: 51,469.
Total Annual Burden Cost: $3,130,859.27.
Subsequent Year Burden:
Total Annual Number of Respondents: 139.
Total Annual Responses: 139.
Total Annual Burden Hours: 13,677.
Total Annual Burden Cost: $831,971.91.

Direct your requests for a copy of the information collection to Deborah Boothe or T. Glenn Foster, U.S. Department of Transportation, Pipeline & Hazardous Materials Safety Administration (PHMSA), East Building, Office of Hazardous Materials Standards (PHH–11), 1200 New Jersey Avenue Southeast Washington DC, 20590, Telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This interim final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative to achieve the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order federal agencies to conduct an environmental review considering: (1) The need for the proposed action; (2) alternatives to the proposed action; (3) probable environmental impacts of the proposed action and alternatives; and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

In accordance with the CEQ regulations, we completed an environmental assessment for this interim final rule that considers the potential environmental impacts of three alternatives. The environmental assessment is available for review in the public docket for this rulemaking.

The provisions of this interim final rule build on current regulatory requirements to enhance the transportation safety and security of shipments of hazardous materials transported by rail, thereby reducing the risks of an accidental or intentional release of hazardous materials and consequent environmental damage. The net environmental impact, therefore, will be moderately positive. There are no significant environmental impacts associated with this interim final rule.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://www.regulations.gov.*

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 174

Hazardous materials transportation, Rail carriers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending title 49 Chapter I, Subchapter C, as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.53.

■ 2. Revise the title of subpart I of part 172 to read as follows:

Subpart I—Safety and Security Plans

■ 3. Add new § 172.820, to read as follows:

§ 172.820 Additional planning requirements for transportation by rail.

(a) *General.* Each rail carrier transporting in commerce one or more of the following materials is subject to the additional safety and security planning requirements of this section:

(1) More than 2,268 kg (5,000 lbs) in a single carload of a Division 1.1, 1.2 or 1.3 explosive;

(2) A bulk quantity of a material poisonous by inhalation, as defined in § 171.8 of this subchapter (including anhydrous ammonia); or

(3) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this subchapter.

(b) *Commodity data.* Not later than 90 days after the end of each calendar year, a rail carrier must compile commodity data for the previous calendar year for the materials listed in paragraph (a) of this section, except that for calendar year 2008, data may be compiled for the 6-month period beginning July 1, 2008. The following stipulations apply to data collected:

(1) Commodity data must be collected by route, a line segment or series of line segments as aggregated by the rail carrier. Within the rail carrier selected route, the commodity data must identify the geographic location of the route and the total number of shipments by UN identification number for the materials specified in paragraph (a) of this section.

(2) A carrier may compile commodity data, by UN number, for all Class 7 materials transported (instead of only highway route controlled quantities of Class 7 materials) and for all Division 6.1 materials transported (instead of only Division 6.1 poison inhalation hazard materials).

(c) *Rail transportation route analysis.* For each calendar year, a rail carrier must analyze the safety and security risks for the transportation route(s), identified in the commodity data collected as required by paragraph (b) of this section. The route analysis must be in writing and include the factors contained in Appendix D to this part, as applicable.

(1) The safety and security risks present must be analyzed for the route and railroad facilities along the route. For purposes of this section, railroad facilities are railroad property including, but not limited to, classification and switching yards, storage facilities, and non-private sidings. This term does not include an offeror's facility, private track, private siding, or consignee's facility.

(2) In performing the analysis required by this paragraph, the rail carrier must seek relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to the route(s) utilized. If a rail carrier is unable to acquire relevant information from state, local, or tribal officials, then it must document that in its analysis. For purposes of this section, a high-consequence target means a property, natural resource, location, area, or other target designated by the Secretary of Homeland Security that is a viable terrorist target of national significance, the attack of which by railroad could result in catastrophic loss of life, significant damage to national security or defense capabilities, or national economic harm.

(d) *Alternative route analysis.* (1) For each calendar year, a rail carrier must identify practicable alternative routes over which it has authority to operate, if an alternative exists, as an alternative route for each of the transportation routes analyzed in accordance with paragraph (c) of this section. The carrier must perform a safety and security risk assessment of the alternative routes for comparison to the route analysis prescribed in paragraph (c) of this section. The alternative route analysis must be in writing and include the criteria in Appendix D of this part. When determining practicable alternative routes, the rail carrier must consider the use of interchange agreements with other rail carriers. The written alternative route analysis must also consider:

(i) Safety and security risks presented by use of the alternative route(s);

(ii) Comparison of the safety and security risks of the alternative(s) to the primary rail transportation route, including the risk of a catastrophic release from a shipment traveling along each route;

(iii) Any remediation or mitigation measures implemented on the primary or alternative route(s); and

(iv) Potential economic effects of using the alternative route(s), including but not limited to the economics of the commodity, route, and customer relationship.

(2) In performing the analysis required by this paragraph, the rail carrier should seek relevant information from state, local, and tribal officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to the alternative routes. If a rail carrier determines that it is not

appropriate to seek such relevant information, then it must explain its reasoning for that determination in its analysis.

(e) *Route Selection.* A carrier must use the analysis performed as required by paragraphs (c) and (d) of this section to select the route to be used in moving the materials covered by paragraph (a) of this section. The carrier must consider any remediation measures implemented on a route. Using this process, the carrier must at least annually review and select the practicable route posing the least overall safety and security risk. The rail carrier must retain in writing all route review and selection decision documentation and restrict the distribution, disclosure, and availability of information contained in the route analysis to covered persons with a need-to-know, as described in parts 15 and 1520 of this title. This documentation should include, but is not limited to, comparative analyses, charts, graphics or rail system maps.

(f) *Completion of route analyses.* (1) The initial rail transportation route analysis, alternative route analysis, and route selection process required under paragraphs (c), (d), and (e) of this section must be completed by September 1, 2009. In subsequent years, the rail transportation route analysis, alternative route analysis, and route selection process required under paragraphs (c), (d), and (e) of this section must be completed no later than the end of the calendar year following the year to which the analyses apply. The initial analysis and route selection determinations required under paragraphs (c), (d), and (e) of this section must include a comprehensive review of the entire system. Subsequent analyses and route selection determinations required under paragraphs (c), (d), and (e) of this section must include a comprehensive, system-wide review of all operational changes, infrastructure modifications, traffic adjustments, changes in the nature of high-consequence targets located along, or in proximity to, the route, and any other changes affecting the safety or security of the movements of the materials specified in paragraph (a) of this section that were implemented during the calendar year.

(2) A rail carrier need not perform a rail transportation route analysis, alternative route analysis, or route selection process for any hazardous material other than the materials specified in paragraph (a) of this section.

(g) *Storage, delays in transit, and notification.* With respect to the materials specified in paragraph (a) of this section, each rail carrier must ensure the safety and security plan it develops and implements under this subpart includes all of the following:

(1) A procedure under which the rail carrier must formally consult with offerors and consignees in order to develop measures for minimizing, to the extent practicable, the duration of any storage of the material incidental to movement (see § 171.8 of this subchapter). Such measures should be implemented with mutual consent of all parties.

(2) Measures to prevent unauthorized access to the materials during storage or delays in transit.

(3) Measures to mitigate risk to population centers associated with in-transit storage.

(4) Measures to be taken in the event of an escalating threat level for materials stored in transit.

(5) Procedures for notifying the consignee in the event of a significant delay during transportation; such notification must be completed within 48 hours after the carrier has identified the delay and must include a revised delivery schedule. A significant delay is one that compromises the safety or security of the hazardous material or delays the shipment beyond its normal expected or planned shipping time. Notification should be made by a method acceptable to both the rail carrier and consignee.

(h) *Recordkeeping.* (1) Each rail carrier must maintain a copy of the information specified in paragraphs (b), (c), (d), (e), and (f) of this section (or an electronic image thereof) that is accessible at, or through, its principal place of business and must make the record available upon request, at a reasonable time and location, to an authorized official of the Department of Transportation or the Department of Homeland Security. Records must be retained for a minimum of two years.

(2) Each rail carrier must restrict the distribution, disclosure, and availability of information collected or developed in accordance with paragraphs (c), (d), (e), and (f) of this section to covered persons with a need-to-know, as described in parts 15 and 1520 of this title.

(i) *Compliance and enforcement.* If the carrier's route selection documentation and underlying analyses are found to be deficient, the carrier may be required to revise the analyses or make changes in route selection. If DOT finds that a chosen route is not the safest and most secure practicable route available, the FRA Associate Administrator for Safety, in consultation with TSA, may require the use of an alternative route. Prior to making such a determination, FRA and TSA will consult with the Surface Transportation Board (STB) regarding whether the contemplated alternative route(s) would be economically practicable.

■ 4. Add new § 172.822 to read as follows:

§ 172.822 Limitation on actions by states, local governments, and Indian tribes.

A law, order, or other directive of a state, political subdivision of a state, or an Indian tribe that designates, limits, or prohibits the use of a rail line (other than a rail line owned by a state, political subdivision of a state, or an Indian tribe) for the transportation of hazardous materials, including, but not limited to, the materials specified in § 172.820(a), is preempted. 49 U.S.C. 5125, 20106.

■ 5. Add new Appendix D to part 172, to read as follows:

Appendix D to Part 172—Rail Risk Analysis Factors

A. This appendix sets forth the minimum criteria that must be considered by rail carriers when performing the safety and security risk analyses required by § 172.820. The risk analysis to be performed may be quantitative, qualitative, or a combination of both. In addition to clearly identifying the hazardous material(s) and route(s) being analyzed, the analysis must provide a thorough description of the threats, identified vulnerabilities, and mitigation measures implemented to address identified vulnerabilities.

B. In evaluating the safety and security of hazardous materials transport, selection of the route for transportation is critical. For the purpose of rail transportation route analysis, as specified in § 172.820(c) and (d), a route may include the point where the carrier takes possession of the material and all track and railroad facilities up to the point where the material is relinquished to another entity. Railroad facilities are railroad property including, but not limited to, classification and switching yards, storage facilities, and non-private sidings; however, they do not include an offeror's facility, private track, private siding, or consignee's facility. Each rail carrier must use best efforts to communicate with its shippers, consignees, and interlining partners to ensure the safety and security of shipments during all stages of transportation.

C. Because of the varying operating environments and interconnected nature of the rail system, each carrier must select and document the analysis method/model used and identify the routes to be analyzed.

D. The safety and security risk analysis must consider current data and information as well as changes that may reasonably be anticipated to occur during the analysis year. Factors to be considered in the performance of this safety and security risk analysis include:

1. Volume of hazardous material transported;

2. Rail traffic density;
3. Trip length for route;
4. Presence and characteristics of railroad facilities;
5. Track type, class, and maintenance schedule;
6. Track grade and curvature;
7. Presence or absence of signals and train control systems along the route ("dark" versus signaled territory);
8. Presence or absence of wayside hazard detectors;
9. Number and types of grade crossings;
10. Single versus double track territory;
11. Frequency and location of track turnouts;
12. Proximity to iconic targets;
13. Environmentally sensitive or significant areas;
14. Population density along the route;
15. Venues along the route (stations, events, places of congregation);
16. Emergency response capability along the route;
17. Areas of high consequence along the route, including high consequence targets as defined in § 172.820(c);
18. Presence of passenger traffic along route (shared track);
19. Speed of train operations;
20. Proximity to en-route storage or repair facilities;
21. Known threats, including any non-public threat scenarios provided by the Department of Homeland Security or the Department of Transportation for carrier use in the development of the route assessment;
22. Measures in place to address apparent safety and security risks;
23. Availability of practicable alternative routes;
24. Past incidents;
25. Overall times in transit;
26. Training and skill level of crews; and
27. Impact on rail network traffic and congestion.

PART 174—CARRIAGE BY RAIL

■ 6. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 7. Revise § 174.9 to read as follows:

§ 174.9 Safety and security inspection and acceptance.

(a) At each location where a hazardous material is accepted for transportation or placed in a train, the carrier must inspect each rail car containing the hazardous material, at ground level, for required markings, labels, placards, securement of closures, and leakage. These inspections may be performed in conjunction with inspections required under parts 215 and 232 of this title.

(b) For each rail car containing an amount of hazardous material requiring placarding in accordance with § 172.504 of this subchapter, the carrier must visually inspect the rail car at ground level for signs of tampering, including closures and seals, for suspicious items or items that do not belong, and for other signs that the security of the car may have been compromised, including the presence of an improvised explosive device. As used in this section, an improvised explosive device is a device fabricated in an improvised manner incorporating explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals in its design, and generally includes a power supply, a switch or timer, and a detonator or initiator. The carrier should be particularly attentive to signs that security may have been compromised on rail cars transporting materials covered by § 172.820 of this subchapter, rail carload quantities of ammonium nitrate or ammonium nitrate mixtures in solid form, or hazardous materials of interest based on current threat information.

(c) If a rail car does not conform to the safety and security requirements of this subchapter, the carrier may not forward or transport the rail car until the deficiencies are corrected or the car is approved for movement in accordance with § 174.50.

(d) Where an indication of tampering or suspicious item is found, a carrier must take appropriate action to ensure the security of the rail car and its contents have not been compromised before accepting the rail car for further movement. If the carrier determines that the security of the rail car has been compromised, the carrier must take action, in conformance with its existing security plan (see subpart I of part 172 of this subchapter) to address the security issues before forwarding the rail car for further movement.

Issued in Washington, DC on April 11, 2008, under the authority delegated in 49 CFR part 1.

Carl T. Johnson,

Administrator.

[FR Doc. E8–8185 Filed 4–15–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[FRA–2007–28573]

RIN 2130–AB87

Railroad Safety Enforcement Procedures; Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: In a separate document published today, the Pipeline and Hazardous Materials Safety Administration is requiring railroad carriers to compile annual data on specified shipments of hazardous materials (security-sensitive materials), use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. This document proposes procedures to enable railroad carriers to challenge rail routing decisions made by the FRA Associate Administrator for Safety in accordance with PHMSA's requirements.

DATES: Submit comments by June 16, 2008. To the extent possible, we will consider late-filed comments as we develop a final rule.

ADDRESSES: You may submit comments identified by the docket number FRA 2007–28573 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number FRA–2007–28573 for this notice at the beginning of your comment. Internet users may access comments received by DOT at *http://www.regulations.gov.* Note that comments received may be posted without change to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act section of this document.

Comments or those portions of comments FRA determines to include trade secrets, confidential commercial information, or sensitive security information (SSI) will not be placed in the public docket and will be handled separately. If you believe your comments contain trade secrets, confidential commercial information, or SSI, those comments or the relevant portions of those comments should be appropriately marked so that DOT may make a determination. FRA procedures in 49 CFR 209.11 establish a mechanism by which commenters may request confidentiality.

In accordance with 49 CFR 209.11, you may ask FRA to keep information confidential using the following procedures: (1) Mark the document or portions of the document "CONFIDENTIAL" or "CONTAINS CONFIDENTIAL INFORMATION"; (2) send DMS both the original document and a second copy of the original document with the confidential information deleted; and (3) include a separate, detailed statement justifying nondisclosure, explaining why the information is confidential (such as a trade secret, confidential commercial information, or SSI), and referring to the specific legal authority claimed. In your explanation, you should provide enough information to enable FRA to determine whether the information provided is protected by law and must be handled separately.

In addition, for comments or portions of comments that you believe contain SSI as defined in 49 CFR 15.7, you should comply with Federal regulations governing restrictions on the disclosure of SSI. See 49 CFR 1520.9 and 49 CFR 15.9. For example, these sections restrict the sharing of SSI to those with a need to know, set out the requirement to mark the information as SSI, and address how the information should be disposed. Note also when mailing in or using a special delivery service to send comments containing SSI, comments should be wrapped in a manner to prevent the information from being read. FRA and the Transportation Security Administration (TSA) may perform concurrent reviews on requests for designations as SSI.

After reviewing your request for confidentiality and the information provided, FRA will analyze applicable laws and regulations to decide whether to treat the information as confidential. FRA will notify you of the decision to grant or deny confidentiality. If FRA denies confidentiality, you will be provided an opportunity to respond to the denial before the information is publicly disclosed. FRA will reconsider its decision to deny confidentiality based on your response.

Regarding comments not marked as confidential, prior to posting comments received in response to this notice in the public docket, FRA will review all comments, whether or not they are identified as confidential, to determine if the submission or portions of the submission contain information that should not be made available to the general public. FRA will notify you if the agencies make such a determination relative to your comment. If, prior to submitting your comment, you have any questions concerning the procedures for determining confidentiality or security sensitivity, you may call the individual listed below under **FOR FURTHER INFORMATION CONTACT** for more information.

FOR FURTHER INFORMATION CONTACT: Roberta Stewart, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 10, FRA, 1120 Vermont Ave., NW., Washington, DC 20590 (telephone 202–493–6027).

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2006, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a notice of proposed rulemaking (PHMSA's NPRM), 71 FR 76834, proposing revisions to the requirements in the hazardous materials regulations (HMR) applicable to the safe and secure transportation of hazardous materials transported in commerce by rail. In today's edition of the **Federal Register**, PHMSA issued an interim final rule (IFR) on this subject. Specifically, PHMSA is requiring railroad carriers to compile annual data on specified shipments of hazardous materials (security-sensitive materials), use the data to analyze safety and security risks along rail transportation routes where those materials are transported, assess alternative routing options, and make routing decisions based on those assessments. In that IFR, PHMSA also issued clarifications of the current security plan requirements to address en route storage, delays in transit, delivery notification, and additional security inspection requirements for hazardous materials shipments.

The Federal hazardous materials transportation law (Federal hazmat law), 49 U.S.C. 5101 *et seq.*, authorizes the Secretary of the Department of

Transportation (Secretary) to "prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce." The Secretary has delegated this authority to PHMSA (formerly the Research and Special Programs Administration).

The HMR (49 CFR parts 171–180), promulgated by PHMSA under the mandate in 49 U.S.C. 5103(b) govern safety aspects, including security, of the transportation of hazardous material the Secretary considers appropriate. Consistent with this security authority, in March 2003, PHMSA adopted new transportation security requirements for offerors and transporters of certain classes and quantities of hazardous materials and new security training requirements for hazardous materials employees. The security regulations, which are explained in more detail below, require offerors and carriers to develop and implement security plans and to train their employees to recognize and respond to possible security threats.

When PHMSA adopted its security regulations, shippers and railroad carriers were informed these regulations were "the first step in what may be a series of rulemakings to address the security of hazardous materials shipments." 68 FR 14509, 14511 (March 25, 2003). PHMSA also noted that "TSA is developing regulations that are likely to impose additional requirements beyond those established in this final rule," and stated it would "consult and coordinate with TSA concerning security-related hazardous materials transportation regulations * * *" 68 FR 14511.

Enforcement of the HMR has been delegated by the Secretary to modal administrations within DOT. Specifically, FRA is authorized to "carry out the functions vested in the Secretary by 49 U.S.C. 5121(a), (b), (c) and (d), 5122, 5123, and 5124, with particular emphasis on the transportation or shipment of hazardous materials by railroad." 49 CFR 1.49(s).

FRA is the agency within DOT responsible for railroad safety, and is the primary enforcer of safety and security requirements in the HMR pertaining to rail shippers and carriers. FRA inspectors routinely review hazardous materials security plans required by the HMR during site visits to railroad carrier and shipper facilities and may offer suggestions for improving the security plans, as appropriate. If an inspector's recommendations are not implemented, FRA may compel a rail shipper or carrier to make changes to its security plan through its normal enforcement process. FRA consults with TSA concerning railroad security issues in accordance with the FRA–TSA annex to the DOT-Department of Homeland Security Memorandum of Understanding (DOT–DHS MOU) on transportation security.

PHMSA's NPRM and IFR provide that a railroad carrier may be required to revise its analysis or make changes to a route selected by the carrier to move covered hazardous materials if the route selection documentation or underlying analysis is found to be deficient. In addition, both PHMSA's NPRM and IFR provide that if the carrier's chosen route is found not to be the safest and most secure commercially practicable route available, the FRA Associate Administrator for Safety (Associate Administrator), in consultation with TSA, may require the use of an alternative route until such time as identified deficiencies are satisfactorily addressed. PHMSA's NPRM stated that FRA would establish procedures for railroad carriers to appeal a decision by the Associate Administrator to require the use of an alternative route.

Several comments were submitted regarding the PHMSA NPRM and the possibility that the FRA Associate Administrator could require rerouting. The Association of American Railroads (AAR) questioned whether FRA properly had the authority to require rerouting. The Dow Chemical Company and the Institute of Makers of Explosives suggested that, consistent with fundamental concepts of due process, PHMSA should provide an immediate procedure to appeal an FRA determination to require the use of an alternative route. The Surface Transportation Board (STB) suggested that prior to making a determination requiring the use of an alternative route, FRA and TSA obtain the comments of the STB as to whether the contemplated alternative route(s) would be commercially practicable.

FRA's authority to require the use of an alternative route derives from § 5121(a) of the Federal hazmat law. The Secretary is authorized to issue an order, after notice and an opportunity for a hearing, requiring compliance with the Federal hazmat law or a regulation, order, special permit, or approval issued under Federal hazmat law. The authority provided in 49 U.S.C. 5121(a) has been delegated to FRA "with particular emphasis on the transportation or shipment of hazardous materials by railroad" (49 CFR 1.49(s)), as well as to PHMSA, the Federal Aviation Administration, the Federal Motor Carrier Safety Administration and the United States Coast Guard (with "particular emphasis" on the respective authority of these agencies).

II. Proposals in This NPRM

As previously noted, in its rail security NPRM, PHMSA stated that FRA would provide a procedure for administrative due process so that a railroad carrier may seek redress of decision by the Associate Administrator that the carrier's routing analysis is deficient and directing a carrier to use a route while the deficiencies are corrected. 71 FR at 76844. This NPRM proposes procedures governing the review of rail routing decisions, including appeal, and these procedures are summarized below. FRA notes in this regard that the procedures are carefully designed so that a carrier is fully informed of deficiencies found by FRA in a carrier's safety and security routing analysis, and that the carrier is permitted to work with FRA to correct those deficiencies. FRA will only require the use of an alternate route if it concludes the carrier's analysis did not satisfy the minimum criteria for performing a safety and security risk analysis, as established by § 172.820 and appendix D to part 172, and that an alternative route poses the least safety and security risks based on the information available to the agency. Moreover, FRA expects to mandate temporary route changes only for the most exigent circumstances.

Section 209.501 provides that if the Associate Administrator determines that a carrier's route selection documentation and underlying analysis are deficient and fail to establish that the route chosen by the carrier is the safest and most secure route, the Associate Administrator will issue a written notice of review ("Notice") to the railroad carrier. The Notice will specifically address each deficiency found in the railroad carrier's route analysis, and may also include suggested mitigation measures that may be taken to remedy the deficiencies, including selection and use of an alternative commercially practicable route. After issuing the Notice, the Associate Administrator will conference with the railroad carrier for a 30-day period (or longer, if necessary, as determined by the Associate Administrator) to resolve the deficiencies. The Associate Administrator will keep a record of all written correspondence with the railroad carrier, as well as written summaries of each meeting and telephone conversation with the carrier pertaining to the Notice.

If, after the close of the 30-day period, the Associate Administrator concludes

that the identified deficiencies have not been satisfactorily resolved, the Associate Administrator will:

(1) Consult with TSA and PHMSA regarding the safety and security of the route proposed by the railroad carrier and any alternative route(s) over which the carrier is authorized to operate that are being considered by the Associate Administrator. A written summary of the recommendations from TSA and PHMSA will be prepared;

(2) Obtain the comments of the STB regarding whether the alternative route(s) under consideration by the Associate Administrator would be commercially practicable; and

(3) After fully considering the input of TSA, PHMSA and STB, render a decision.

In section 209.501(d), there are two possible outcomes of a decision by the Associate Administrator. First, the Associate Administrator may find that the route analysis and documentation provided by the railroad carrier are sufficient to support the route selected by the carrier or that commercial practicability issues preclude the use of an alternative route. In either of those circumstances, the Associate Administrator would conclude the route review without further action, and notify the railroad carrier of the decision in writing.

Alternately, the Associate Administrator may conclude that the railroad carrier's route analysis does not support the railroad carrier's original selected route, that safety and security considerations establish a significant preference for an alternative route, and that the alternative route is commercially practicable. The Associate Administrator would then issue a second written notice (2nd Notice) to the railroad carrier that specifically identifies deficiencies in the route analysis, including a clear description of the risks that have not been satisfactorily mitigated; explains why the available data and reasonable inferences support an alternative route; and directs the railroad carrier to temporarily use the alternative route determined by the Associate Administrator to be the safest and most secure route. The railroad carrier would be required to start using the alternative route selected by the Associate Administrator within 20 days after the issuance date of the 2nd Notice. The railroad carrier shall use the alternative route until such time as the carrier has adequately mitigated the risks identified by the Associate Administrator on the original route selected by the carrier.

When the Associate Administrator issues a 2nd Notice directing the use of an alternative route pursuant to section 209.501(d)(2), the Associate Administrator shall make available to the railroad carrier the administrative record relied upon in issuing the 2nd Notice, including the recommendations of TSA, PHMSA and the STB to FRA.

Within 20 days after the issuance date of the 2nd Notice, the railroad carrier may: (1) Comply with the Associate Administrator's directive to use an alternative route while addressing deficiencies in its route analysis identified by the Associate Administrator; or (2) file a petition for judicial review of the Associate Administrator's 2nd Notice. Judicial review would be available in an appropriate United States court of appeals as provided in 49 U.S.C. 5127. The filing of a petition for judicial review will not stay or modify the force and effect of final agency action unless otherwise ordered by the Associate Administrator or the court of appeals.

With respect to enforcement of the new rail security requirements established in PHMSA's IFR, FRA plans to work closely with TSA to develop a coordinated enforcement strategy to include both FRA and TSA inspection personnel. We note in this regard that TSA does not have the authority to enforce safety or security requirements established in the HMR. If in the course of an inspection of a railroad carrier, TSA identifies evidence of non-compliance with a DOT security regulation, TSA will provide the information to FRA and PHMSA for appropriate action. TSA will not directly enforce DOT security rules, and will not initiate safety inspections. Consistent with the PHMSA–TSA and FRA–TSA annexes to the DOT–DHS MOU, all the involved agencies will cooperate to ensure coordinated, consistent, and effective activities related to rail security issues.

III. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under authority of the Federal hazmat law (49 U.S.C. 5101 *et seq.*) Section 5103(b) of Federal hazmat law authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. The HMR are issued by PHMSA. 49 CFR 1.53(b). Responsibility for the enforcement of the hazardous materials transportation law and regulations primarily in instances where violations involve railroads and those entities which ship by rail has been delegated to FRA. 49 CFR 1.49(s).

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This NPRM is not significant under the Regulatory Policies and Procedures of DOT (44 FR 11034). The economic impact of this proposed rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

C. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule would not have any direct effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the national government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government.

D. Regulatory Flexibility Act and Executive Order 13272

FRA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would apply to carriers of hazardous materials by rail. Some of these entities are classified as small entities; however, there is no economic impact on any person that complies with Federal hazardous materials law and the regulations and orders issued under that law.

E. Paperwork Reduction Act

There are no new information requirements in this proposed rule.

F. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Act of 1995. It does not result in annual costs of $128,100,000 or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the rule.

G. Environmental Assessment

There are no significant environmental impacts associated with this proposed rule.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking, that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. We have evaluated this proposed rule in accordance with Executive Order 13211, and we have determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, we have determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

I. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Railroad safety enforcement procedures, Reporting and recordkeeping requirements.

Therefore, in consideration of the foregoing, chapter II, subtitle B of title 49 of the Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Amend § 209.3 by adding the following new definitions:

* * * * *

Associate Administrator means the Associate Administrator for Safety, Federal Railroad Administration, or that person's delegate as designated in writing.

* * * * *

Railroad carrier means a person providing railroad transportation.

* * * * *

3. Add new Subpart F to read as follows:

Subpart F—Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions Pursuant to 49 CFR 172.820

§ 209.501 Review of rail transportation safety and security route analysis.

(a) *Review of route analysis.* If the Associate Administrator for Safety determines that a railroad carrier's route selection, analysis and documentation pursuant to § 172.820 of chapter I of this title is deficient and fails to establish that the route chosen by the carrier is the safest and most secure route, the Associate Administrator shall issue a written notice of review ("Notice") to the railroad carrier. The Notice shall specifically address each deficiency found in the railroad carrier's route analysis. The Notice may also include suggested mitigation measures that the railroad carrier may take to remedy the deficiencies found, including selection of an alternative commercially feasible routing.

(b) *Conference to resolve deficiencies.* After issuing the Notice, the Associate Administrator conferences with the railroad carrier for a thirty (30)-day period, or such longer period as provided by the Associate Administrator, to resolve the deficiencies as identified in the Notice. The Associate Administrator keeps a record of all written correspondence with the railroad carrier and a summary of each meeting and telephone conversation with the railroad carrier that pertains to the Notice.

(c) *Consultation with and comment from other agencies.* If, after the close of the conference period, the Associate Administrator concludes that the issues identified have not been satisfactorily resolved, the Associate Administrator:

(1) Consults with the Transportation Security Administration ("TSA") and the Pipeline and Hazardous Materials Safety Administration (PHMSA) regarding the safety and security of the route proposed by the railroad carrier and any alternative route(s) over which the carrier is authorized to operate that are being considered by the Associate Administrator and prepares a written summary of the recommendations from TSA and PHMSA;

(2) Obtains the comments of the Surface Transportation Board ("STB") regarding whether the alternative route(s) being considered by the Associate Administrator would be commercially practicable; and

(3) Fully considers the input of TSA, PHMSA and the STB and renders a decision pursuant to paragraph (d) of this section which shall be administratively final.

(d) *Decision.* (1) If the Associate Administrator finds that the route analysis and documentation provided by the railroad carrier are sufficient to support the route selected by the carrier or that valid issues of commercial practicability preclude an alternative route, the Associate Administrator concludes the review without further action and so notifies the railroad carrier in writing.

(2) If the Associate Administrator concludes that the railroad carrier's route analysis does not support the railroad carrier's original selected route, that safety and security considerations establish a significant preference for an alternative route, and that the alternative route is commercially practicable, the Associate Administrator issues a second written notice (2nd Notice) to the railroad carrier that:

(i) Specifically identifies deficiencies found in the railroad carrier's route analysis, including a clear description of the risks on the selected route that have not been satisfactorily mitigated;

(ii) Explains why the available data and reasonable inferences indicate that a commercially practicable alternative route poses less safety and security risks than the route selected by the railroad carrier; and

(iii) Directs the railroad carrier, beginning within twenty (20) days of the issuance date of the 2nd Notice on the railroad carrier, to temporarily use the alternative route that the Associate Administrator determines is the safest and most secure route until such time as the railroad carrier has adequately mitigated the risks identified by the Associate Administrator on the original route selected by the carrier.

(e) *Actions following 2nd Notice and re-routing directive.* When issuing a 2nd Notice that directs the use of an alternative route, the Associate Administrator shall make available to the railroad carrier the administrative record relied upon by the Associate Administrator in issuing the 2nd Notice, including the recommendations of TSA, PHMSA and STB to FRA made pursuant to paragraphs (c)(1) and (2) of this section. Within twenty (20) days of the issuance date of the Associate

Administrator's 2nd Notice, the railroad carrier may:

(1) Comply with the Associate Administrator's directive to use an alternative route while the carrier works to address the deficiencies in its route analysis identified by the Associate Administrator; or

(2) File a petition for judicial review of the Associate Administrator's 2nd Notice, pursuant to paragraph (f) of this section.

(f) *Review and decision by Associate Administrator on revised route analysis submitted in response to 2nd Notice.* Upon submission of a revised route analysis containing an adequate showing by the railroad carrier that its original selected route is the safest and most secure route, the Associate Administrator notifies the carrier in writing that the carrier may use its original selected route.

(g) *Appellate review.* If a railroad carrier is aggrieved by final agency action, it may petition for review of the final decision in the appropriate United States court of appeals as provided in 49 U.S.C. 5127. The filing of the petition for review does not stay or modify the force and effect of the final agency action unless the Associate Administrator or the Court orders otherwise.

(h) *Time.* In computing any period of time prescribed by this part, the day of any act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned days.

4. In appendix B to part 209, amend the civil penalty guideline table by adding the following entries:

Appendix B to Part 209—Federal Railroad Administration Guidelines for Initial Hazardous Material Assessments

* * * * *

172.820(a)–(e)	General failure to perform safety and security route analysis. *Factors to consider are the size of the railroad carrier, and the quantities of hazmat transported.*	5,000–10,000
172.820(a)–(e)	Partial failure to complete route analysis; failure to complete a component of the route analysis —Compilation of security-sensitive commodity data. —Identification of practicable alternative routes. —Consultation with State, local, and tribal officials, as appropriate regarding security risks to high-consequence targets along or in proximity to a route used by the carrier to transport security-sensitive materials. —Safety and security route analysis of route used. —Safety and security altenative route analysis.	5,000
172.820(f)	Failure to complete route analyses within the prescribed time frame	2,000
172.820(g)	Failure to include one of the following components in safety and security plan —Procedure for consultation with offerors and consignees to minimize storage of security-sensitive materials incidental to movement. —Measures to limit unauthorized access to the materials during storage or delays in transit. —Measures to mitigate risk to population centers associated with in-transit storage of the materials. —Measures to be taken in the event of escalating threat levels for the materials stored in transit (*Unit of violation is the component. For a total failure to have a security plan, cite § 172.800 and use the penalties provided for that section.*).	2,000
172.820(h)	Failure to maintain records and make available to DOT and DHS authorized officials	2,000
172.820(i)	Failure to use route designated by FRA Associate Administrator for Safety	10,000

* * * * *

Issued in Washington, DC, on April 10, 2008.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. E8–8187 Filed 4–15–08; 8:45 am]

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Agricultural Marketing Service

Hazelnuts Grown in Oregon and Washington:

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Peanut Promotion, Research, and Information Order:

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Fisheries of the Exclusive Economic Zone Off Alaska:

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H.R. 1593/P.L. 110–199

Second Chance Act of 2007: Community Safety Through Recidivism Prevention (Apr. 9, 2008; 122 Stat. 657)

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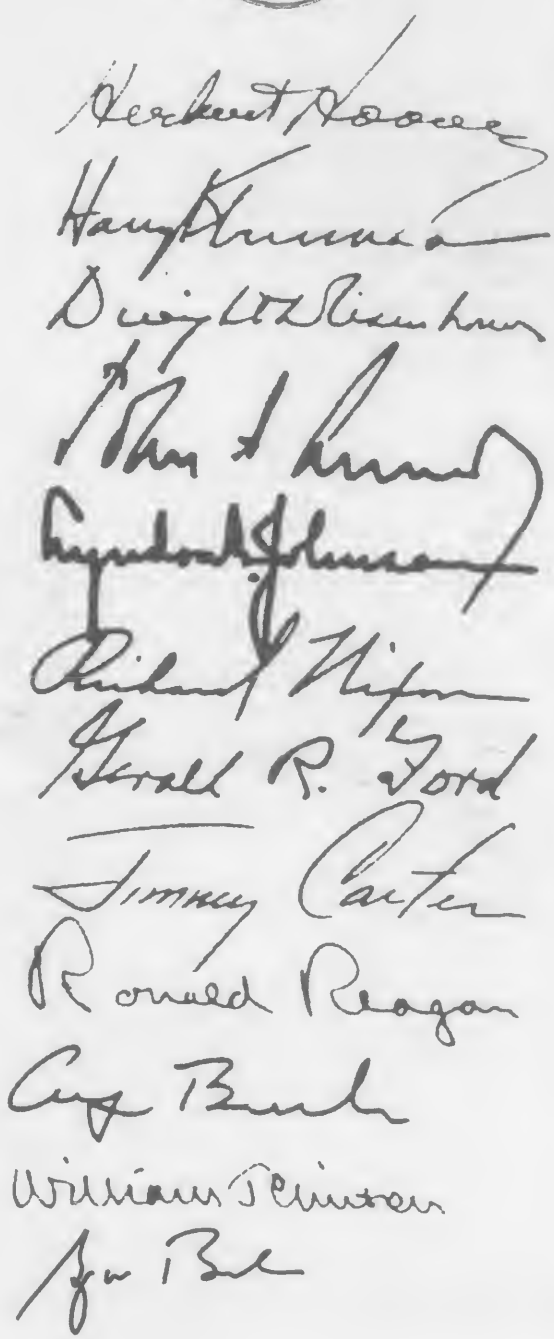

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